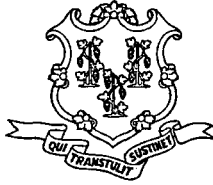


2006

Connecticut General Assembly



SENATE BILLS

Bill No. 465

Resolutions \_\_\_\_\_

Committee Bills \_\_\_\_\_

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LEGISLATIVE REFERENCE SECTION



General Assembly  
February Session, 2006

**Raised Bill No. 465**  
LCO No. 2547



Referred to Committee on **ENVIRONMENT**

Introduced by:  
(ENV)

**AN ACT CONCERNING THE UNDERGROUND STORAGE TANK  
PETROLEUM CLEAN-UP ACCOUNT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-449a of the 2006 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2006, and applicable to applications filed with the*  
4 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
5 *2006*):

6 As used in this section and sections 22a-449c to 22a-449m, inclusive,  
7 as amended by this act, and 22a-449p:

8 (1) "Petroleum" means crude oil, crude oil fractions and refined  
9 petroleum fractions, including gasoline, kerosene, heating oils and  
10 diesel fuels;

11 (2) "Release" means any spilling, leaking, pumping, pouring,  
12 emitting, emptying, discharging, injecting, escaping, leaching,  
13 dumping or disposing of petroleum from any underground storage  
14 tank or underground storage tank system;

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15 (3) "Responsible party" means (A) for an application or request for  
 16 payment or reimbursement received by the board before [July 1, 2005]  
 17 October 1, 2006, or for a determination regarding a person's status as a  
 18 responsible party or a third party with respect to a specific release or  
 19 suspected release made by the board before [July 1, 2005] October 1,  
 20 2006, any person who owns or operates an underground storage tank  
 21 or underground storage tank system from which a release or suspected  
 22 release emanates, (B) for an application or request for payment or  
 23 reimbursement received by the board on or after [July 1, 2005] October  
 24 1, 2006, any person who (i) at any time owns, leases, uses or has an  
 25 interest in the real property on which an underground storage tank  
 26 system is or was located from which there is or has been a release or  
 27 suspected release, regardless of when the release or suspected release  
 28 occurred, or whether such person owned, leased, used or had an  
 29 interest in the real property at the time the release or suspected release  
 30 occurred, or whether such person owned, operated, leased or used the  
 31 underground storage tank system from which the release or suspected  
 32 release occurred, (ii) at any time owns, leases, operates, uses, or has an  
 33 interest in an underground storage tank system from which there is or  
 34 has been a release or suspected release, regardless of when the release  
 35 or suspected release occurred or whether such person owned, leased,  
 36 operated, used or had an interest in the underground storage tank  
 37 system at the time the release or suspected release occurred, or (iii) is  
 38 affiliated with a person described in subclause (i) or (ii) of this  
 39 subparagraph through a direct or indirect familial relationship or any  
 40 [contractual,] corporate or financial relationship;

41 (4) "Underground storage tank" means a tank or combination of  
 42 tanks, including underground pipes connected thereto, used to contain  
 43 an accumulation of petroleum, whose volume is ten per cent or more  
 44 beneath the surface of the ground, including the volume of  
 45 underground pipes connected thereto;

46 (5) "Underground storage tank system" means an underground  
 47 storage tank and any associated ancillary equipment and containment

48 system;

49 (6) "Residential underground heating oil storage tank system"  
50 means (A) an underground storage tank system used in connection  
51 with residential real property composed of four residential units or  
52 fewer, or (B) a storage tank system and any associated ancillary  
53 equipment used in connection with residential real property composed  
54 of four residential units or fewer; and

55 (7) "Person" means any individual, firm, partnership, association,  
56 syndicate, company, trust, corporation, limited liability company,  
57 municipality, agency or political or administrative subdivision of the  
58 state, or other legal entity of any kind.

59 Sec. 2. Section 22a-449c of the 2006 supplement to the general  
60 statutes is repealed and the following is substituted in lieu thereof  
61 (*Effective October 1, 2006, and applicable to applications filed with the*  
62 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
63 *2006*):

64 (a) (1) There is established an account to be known as the  
65 "underground storage tank petroleum clean-up account". The  
66 underground storage tank petroleum clean-up account shall be an  
67 account [of the Environmental Quality Fund. Notwithstanding any  
68 provision of the general statutes to the contrary, any moneys collected  
69 shall be deposited in the Environmental Quality Fund and credited to  
70 the underground storage tank petroleum clean-up account] that shall  
71 be held by the Underground Storage Tank Clean-Up Review Board  
72 established under section 22a-449d, as amended by this act. The board  
73 may use not more than one million five hundred thousand dollars  
74 from the account for administrative costs. Any balance remaining in  
75 said account at the end of any fiscal year shall be carried forward in  
76 said account for the fiscal year next succeeding.

77 (2) The account shall be used by the [Commissioner of  
78 Environmental Protection] Underground Storage Tank Clean-Up

79 Review Board to provide money for reimbursement or payment  
80 pursuant to section 22a-449f, as amended by this act, to responsible  
81 parties or parties supplying goods or services, for costs, expenses and  
82 other obligations paid or incurred, as the case may be, as a result of  
83 releases, and suspected releases, costs of investigation and remediation  
84 of releases and suspected releases, and for claims by a person other  
85 than a responsible party for bodily injury, property damage and  
86 damage to natural resources that have been finally adjudicated or  
87 settled with the prior written consent of the board. The [commissioner]  
88 board may also make payment from the account to an assignee who is  
89 in the business of receiving assignments of amounts approved by the  
90 board, but not yet paid from the account, provided the party making  
91 any such assignment, using a form approved by the [commissioner]  
92 board, directs the [commissioner] board to pay such assignee, that no  
93 cost of any assignment shall be borne by the account and that the state  
94 and its agencies shall not bear any liability with respect to any such  
95 assignment.

96 (3) Notwithstanding the provisions of this section regarding  
97 reimbursements of parties pursuant to section 22a-449f, as amended by  
98 this act, and regulations adopted pursuant to section 22a-449e, as  
99 amended by this act, and regardless of when an application for  
100 payment or reimbursement from the account may have been  
101 submitted to the board, [payment or reimbursement shall be made in  
102 accordance with the following: (A) After] after June 1, 2004, no  
103 payment or reimbursement shall be made for any costs, expenses and  
104 other obligations paid or incurred for remediation, including any  
105 monitoring to determine the effectiveness of the remediation, of a  
106 release to levels more stringent than or beyond those specified in the  
107 remediation standards established pursuant to section 22a-133k, except  
108 to the extent the applicant demonstrates that it has been directed  
109 otherwise, in writing, by the [commissioner; (B) after June 1, 2005, no  
110 payment or reimbursement from the account shall be made to any  
111 person for diminution in property value or interest; and (C) after June  
112 1, 2005, no payment or reimbursement from the account shall be made

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113 for attorneys' fees or other costs of legal representation paid or  
114 incurred as a result of a release or suspected release (i) in excess of five  
115 thousand dollars to any responsible party, (ii) in excess of ten  
116 thousand dollars to any person other than a responsible party, and (iii)  
117 by a responsible party regarding the defense of claims brought by  
118 another person] Commissioner of Environmental Protection. In  
119 addition, notwithstanding the provisions of this section regarding  
120 reimbursements of parties pursuant to section 22a-449f, as amended by  
121 this act, the responsible party shall bear all costs of the release that are  
122 less than ten thousand dollars and all persons shall bear all costs of the  
123 release that are more than one million dollars, except that for any such  
124 release which was reported to the department prior to December 31,  
125 1987, and for which more than five hundred thousand dollars has been  
126 expended by the responsible party to remediate such release prior to  
127 June 19, 1991, the responsible party for the release shall bear all costs of  
128 such release which are less than ten thousand dollars or more than five  
129 million dollars, provided the portion of any reimbursement or  
130 payment in excess of three million dollars may, at the discretion of the  
131 [commissioner] board, be made in annual payments for up to a five-  
132 year period. [There shall be allocated to the department annually, for  
133 administrative costs, two million dollars.]

134 (b) There is established a subaccount within the underground  
135 storage tank petroleum clean-up account to be known as the  
136 "residential underground heating oil storage tank system clean-up  
137 subaccount" to be used solely for the provision of reimbursements  
138 under sections 22a-449l and 22a-449n, for the remediation of  
139 contamination attributed to residential underground heating oil  
140 storage tank systems. The subaccount shall hold the proceeds of the  
141 bond funds allocated pursuant to section 51 of public act 00-167\*.

142 [(c) There is established a subaccount within the underground  
143 storage tank petroleum clean-up account to be known as the "pay for  
144 performance subaccount" with which the commissioner may  
145 implement a program, in consultation with the board, in which

146 reimbursement or repayment in accordance with this section is based  
147 upon the achievement of environmental milestones or results. The  
148 commissioner, with the approval of the board, may enter into contracts  
149 to implement any such program.

150 (d) (1) If an initial application or request for payment or  
151 reimbursement is received by the board before July 1, 2005, no  
152 supplemental application or request for payment or reimbursement  
153 shall be submitted to the board on or after October 1, 2009, regarding  
154 costs, expenses or other obligations paid or incurred in response to the  
155 release or suspected release noted in any such initial application or  
156 request for payment or reimbursement. The provisions of this  
157 subdivision shall apply regardless of whether the cost, expense or  
158 other obligation was paid or incurred before October 1, 2009, and no  
159 reimbursement or payment from the account shall be ordered by the  
160 board or made by the commissioner regarding any such supplemental  
161 application or request for payment or reimbursement received by the  
162 board on or after the October 1, 2009, deadline established in this  
163 subdivision.

164 (2) If an initial application or request for payment or reimbursement  
165 is received by the board on or after July 1, 2005, no supplemental  
166 application or request for payment or reimbursement shall be  
167 submitted to the board more than five years after the date that the  
168 initial application or request for payment or reimbursement was  
169 received by the board, regarding costs, expenses or other obligations  
170 paid or incurred in response to the release or suspected release noted  
171 in such initial application or request for payment or reimbursement.  
172 The provisions of this subdivision shall apply regardless of whether a  
173 cost, expense or other obligation was paid or incurred before the  
174 expiration of the five-year deadline established in this subdivision and  
175 no reimbursement or payment from the account shall be ordered by  
176 the board or made by the commissioner regarding any such  
177 supplemental application or request for payment or reimbursement  
178 received by the board after the five-year deadline established in this

179 subdivision.

180 (3) Notwithstanding the provisions of subsection (i) of section 22a-  
181 449f, if an application or request for payment or reimbursement is not  
182 brought before the board for a decision not later than six months after  
183 having been received by the board, then six months shall be added to  
184 the deadline applicable pursuant to subdivision (1) or (2) of this  
185 subsection, provided no more than two years shall be added to the  
186 deadline established pursuant to subdivision (1) or (2) of this  
187 subsection regardless of whether one or more applications or requests  
188 for payment or reimbursement have been received by the board but  
189 have not been brought before the board for a decision not later than six  
190 months after receipt. In addition, if the commissioner determines that  
191 an application or request for payment or reimbursement is ready for  
192 decision by the board and such application or request has been placed  
193 on the agenda for the meeting of the board, but cannot be brought  
194 before the board because the board is unable to meet or cannot act on  
195 such application or request, the deadlines established pursuant to  
196 subdivision (1) or (2) of this subsection shall also be extended only for  
197 that period that the board is unable to meet or is unable to act on such  
198 application or request.

199 (4) The provisions of this subsection shall not apply to annual  
200 groundwater remedial actions, including the preparation of a  
201 groundwater remedial action progress report, performed pursuant to  
202 subdivision (6) of section 22a-449p. Notwithstanding the provisions of  
203 this subsection, the board may continue to receive applications or  
204 requests for payment or reimbursement and provided all other  
205 requirements have been met, may order payment or reimbursement  
206 from the account for such activities.

207 (e) (1) Any person who has insurance, or a contract or other  
208 agreement to provide payment or reimbursement for any costs,  
209 expense or other obligation paid or incurred in response to a release or  
210 suspected release may submit an application or request seeking



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211 payment or reimbursement from the account to the board, provided  
212 any such application or request for payment or reimbursement shall be  
213 subject to all applicable requirements, including, but not limited to,  
214 subdivision (7) of subsection (c) of section 22a-449f.

215 (2) Any person who at any time receives or expects to receive  
216 payment or reimbursement from any source other than the account for  
217 any cost, expense, obligation, damage or injury for which such person  
218 has received or has applied for payment or reimbursement from the  
219 account, shall notify the board, in writing, of such supplemental or  
220 expected payment and shall, not more than thirty days after receiving  
221 such supplemental payment, repay the underground storage tank  
222 petroleum clean-up fund all such amounts received from any other  
223 source.

224 (3) If the board determines that a person is seeking or has sought  
225 payment or reimbursement for any cost, expense, obligation, damage  
226 or injury from the account and that payment or reimbursement for any  
227 such cost, expense, obligation, damage or injury is actually or  
228 potentially available to any such person from any source other than the  
229 account, the board may impose any conditions it deems reasonable  
230 regarding any amount it orders to be paid from the account.]

231 Sec. 3. Section 22a-449d of the 2006 supplement to the general  
232 statutes is repealed and the following is substituted in lieu thereof  
233 (*Effective October 1, 2006, and applicable to applications filed with the*  
234 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
235 *2006*):

236 (a) There is established an Underground Storage Tank Petroleum  
237 Clean-Up Account Review Board. Upon application for reimbursement  
238 or payment pursuant to section 22a-449f, as amended by this act, the  
239 board shall determine, based on the provisions of sections 22a-449a to  
240 22a-449i, inclusive, as amended by this act, and all regulations adopted  
241 pursuant to said sections 22a-449a to 22a-449i, inclusive, whether or  
242 not to order payment or reimbursement from the account. The board

243 shall receive reports from the Department of Environmental Protection  
244 concerning a release relating to an application. The board shall have  
245 the authority to order payment from the residential underground  
246 heating oil storage tank system clean-up subaccount to registered  
247 contractors pursuant to section 22a-449l, or to owners pursuant to  
248 section 22a-449n, for reasonable costs associated with the remediation  
249 of a residential underground heating oil storage tank system based on  
250 the guidelines established pursuant to subsection (c) of this section;  
251 hold hearings, administer oaths, subpoena witnesses and documents  
252 through its chairperson when authorized by the board; designate an  
253 agent to perform such duties of the board as it deems necessary except  
254 the duty to render a final decision to order reimbursement or payment  
255 from the account; and provide by notice, printed on any form, that any  
256 false statement made thereof or pursuant thereto is punishable  
257 pursuant to section 53a-157b. Not later than January 1, 2007, and  
258 annually thereafter, the board shall report to the joint standing  
259 committee of the General Assembly having cognizance of matters  
260 relating to the environment regarding the continuing needs of the  
261 program.

262 (b) The board shall consist of the [Commissioners] Commissioner of  
263 Environmental Protection, and [Revenue Services,] the Secretary of the  
264 Office of Policy and Management, [and the State Fire Marshal,] or their  
265 designees; one member representing the Connecticut Petroleum  
266 Council, appointed by the speaker of the House of Representatives;  
267 one member representing the Service Station Dealers Association,  
268 appointed by the majority leader of the Senate; one member of the  
269 public, appointed by the majority leader of the House of  
270 Representatives; one member representing the Independent  
271 Connecticut Petroleum Association, appointed by the president pro  
272 tempore of the Senate; one member representing the Gasoline and  
273 Automotive Service Dealers of America, Inc., appointed by the  
274 minority leader of the House of Representatives; one member  
275 representing a municipality with a population greater than one  
276 hundred thousand; appointed by the Governor; one member

277 representing a municipality with a population of less than one  
 278 hundred thousand, appointed by the minority leader of the Senate; one  
 279 member representing a [small manufacturing company which employs  
 280 fewer than seventy-five persons] Connecticut-based insurance  
 281 company with expertise in environmental impairment insurance,  
 282 appointed by the speaker of the House of Representatives; one  
 283 member experienced in the delivery, installation, and removal of  
 284 residential underground petroleum storage tanks and remediation of  
 285 contamination from such tanks, appointed by the president pro  
 286 tempore of the Senate; and one member who is an environmental  
 287 professional licensed under section 22a-133v and is experienced in  
 288 investigating and remediating contamination attributable to  
 289 underground petroleum storage tanks, appointed by the Governor.  
 290 The board shall annually elect one of its members to serve as  
 291 chairperson.

292 (c) Not later than July 1, 2000, the board shall establish guidelines  
 293 for determining what costs are reasonable for payment under sections  
 294 22a-449l and 22a-449n and shall establish requirements for financial  
 295 assurance, training and performance standards for registered  
 296 contractors, as defined in said sections 22a-449l and 22a-449n. The  
 297 board shall make payment pursuant to section 22a-449n to the owner  
 298 at a rate not to exceed one hundred fifty-seven dollars per ton of  
 299 contaminated soil removed which shall be considered as full payment  
 300 for all eligible costs for remediation. For any claim filed pursuant to  
 301 section 22a-449n where no contaminated soil is removed the board  
 302 shall reimburse eligible costs in accordance with the guidelines  
 303 pursuant to this section.

304 (d) To the extent that funds are available in the residential  
 305 underground heating oil storage tank system clean-up subaccount, the  
 306 board may order payment from such subaccount to registered  
 307 contractors for reimbursement of eligible costs for services associated  
 308 with the remediation of a residential underground heating oil storage  
 309 tank system prior to July 1, 2001, to owners of such systems for

310 payment for eligible costs incurred after July 1, 2001. No such payment  
311 shall be authorized unless the board deems the costs reasonable based  
312 on the guidelines established pursuant to subsection (c) of this section.  
313 Notwithstanding the provisions of this subsection, if the board  
314 determines that the owner may not receive reimbursement payment  
315 from the contractor, the board may, if reimbursement has not been sent  
316 to the contractor, directly reimburse the owner of such system for  
317 eligible costs incurred by the owner and paid to the registered  
318 contractor for services associated with a remediation of a system prior  
319 to July 1, 2001.

320 Sec. 4. Section 12-587 of the 2006 supplement to the general statutes  
321 is repealed and the following is substituted in lieu thereof (*Effective*  
322 *October 1, 2006*):

323 (a) As used in this chapter: (1) "Company" includes a corporation,  
324 partnership, limited partnership, limited liability company, limited  
325 liability partnership, association, individual or any fiduciary thereof;  
326 (2) "quarterly period" means a period of three calendar months  
327 commencing on the first day of January, April, July or October and  
328 ending on the last day of March, June, September or December,  
329 respectively; (3) "gross earnings" means all consideration received  
330 from the first sale within this state of a petroleum product; (4)  
331 "petroleum products" means those products which contain or are  
332 made from petroleum or a petroleum derivative; (5) "first sale of  
333 petroleum products within this state" means the initial sale of a  
334 petroleum product delivered to a location in this state; (6) "export" or  
335 "exportation" means the conveyance of petroleum products from  
336 within this state to a location outside this state for the purpose of sale  
337 or use outside this state; and (7) "sale for exportation" means a sale of  
338 petroleum products to a purchaser which itself exports such products.

339 (b) (1) Except as otherwise provided in subdivision (2) of this  
340 subsection, any company which is engaged in the refining or  
341 distribution, or both, of petroleum products and which distributes

342 such products in this state shall pay a quarterly tax on its gross  
 343 earnings derived from the first sale of petroleum products within this  
 344 state. Each company shall on or before the last day of the month next  
 345 succeeding each quarterly period render to the commissioner a return  
 346 on forms prescribed or furnished by the commissioner and signed by  
 347 the person performing the duties of treasurer or an authorized agent or  
 348 officer, including the amount of gross earnings derived from the first  
 349 sale of petroleum products within this state for the quarterly period  
 350 and such other facts as the commissioner may require for the purpose  
 351 of making any computation required by this chapter. Except as  
 352 otherwise provided in subdivision (3) of this subsection, the rate of tax  
 353 shall be (A) five per cent with respect to calendar quarters prior to July  
 354 1, 2005; (B) five and eight-tenths per cent with respect to calendar  
 355 quarters commencing on or after July 1, 2005, and prior to July 1, 2006;  
 356 (C) six and three-tenths per cent with respect to calendar quarters  
 357 commencing on or after July 1, 2006, and prior to July 1, 2007; (D)  
 358 seven per cent with respect to calendar quarters commencing on or  
 359 after July 1, 2007, and prior to July 1, 2008; (E) seven and one-half per  
 360 cent with respect to calendar quarters commencing on or after July 1,  
 361 2008, and prior to July 1, 2013; and (F) eight and one-tenth per cent  
 362 with respect to calendar quarters commencing on or after July 1, 2013.

363 (2) Gross earnings derived from the first sale of the following  
 364 petroleum products within this state shall be exempt from tax: (A) Any  
 365 petroleum products sold for exportation from this state for sale or use  
 366 outside this state; (B) the product designated by the American Society  
 367 for Testing and Materials as "Specification for Heating Oil D396-69",  
 368 commonly known as number 2 heating oil, to be used exclusively for  
 369 heating purposes or to be used in a commercial fishing vessel, which  
 370 vessel qualifies for an exemption pursuant to section 12-412, as  
 371 amended; (C) kerosene, commonly known as number 1 oil, to be used  
 372 exclusively for heating purposes, provided delivery is of both number  
 373 1 and number 2 oil, and via a truck with a metered delivery ticket to a  
 374 residential dwelling or to a centrally metered system serving a group  
 375 of residential dwellings; (D) the product identified as propane gas, to

376 be used exclusively for heating purposes; (E) bunker fuel oil,  
377 intermediate fuel, marine diesel oil and marine gas oil to be used in  
378 any vessel having a displacement exceeding four thousand dead  
379 weight tons; (F) for any first sale occurring prior to July 1, 2008,  
380 propane gas to be used as a fuel for a motor vehicle; (G) for any first  
381 sale occurring on or after July 1, 2002, grade number 6 fuel oil, as  
382 defined in regulations adopted pursuant to section 16a-22c, to be used  
383 exclusively by a company which, in accordance with census data  
384 contained in the Standard Industrial Classification Manual, United  
385 States Office of Management and Budget, 1987 edition, is included in  
386 code classifications 2000 to 3999, inclusive, or in Sector 31, 32 or 33 in  
387 the North American Industrial Classification System United States  
388 Manual, United States Office of Management and Budget, 1997 edition;  
389 (H) for any first sale occurring on or after July 1, 2002, number 2  
390 heating oil to be used exclusively in a vessel primarily engaged in  
391 interstate commerce, which vessel qualifies for an exemption under  
392 section 12-412, as amended; (I) for any first sale occurring on or after  
393 July 1, 2000, paraffin or microcrystalline waxes; or (J) for any first sale  
394 occurring prior to July 1, 2008, petroleum products to be used as a fuel  
395 for a fuel cell, as defined in subdivision (113) of section 12-412, as  
396 amended.

397 (3) The rate of tax on gross earnings derived from the first sale of  
398 grade number 6 fuel oil, as defined in regulations adopted pursuant to  
399 section 16a-22c, to be used exclusively by a company which, in  
400 accordance with census data contained in the Standard Industrial  
401 Classification Manual, United States Office of Management and  
402 Budget, 1987 edition, is included in code classifications 2000 to 3999,  
403 inclusive, or in Sector 31, 32 or 33 in the North American Industrial  
404 Classification System United States Manual, United States Office of  
405 Management and Budget, 1997 edition, or number 2 heating oil used  
406 exclusively in a vessel primarily engaged in interstate commerce,  
407 which vessel qualifies for an exemption under section 12-412, as  
408 amended, shall be: (A) Four per cent with respect to calendar quarters  
409 commencing on or after July 1, 1998, and prior to July 1, 1999; (B) three

410 per cent with respect to calendar quarters commencing on or after July  
 411 1, 1999, and prior to July 1, 2000; (C) two per cent with respect to  
 412 calendar quarters commencing on or after July 1, 2000, and prior to  
 413 July 1, 2001; and (D) one per cent with respect to calendar quarters  
 414 commencing on or after July 1, 2001, and prior to July 1, 2002.

415 (c) (1) Any company which imports or causes to be imported into  
 416 this state petroleum products for sale, use or consumption in this state,  
 417 other than a company subject to and having paid the tax on such  
 418 company's gross earnings from first sales of petroleum products  
 419 within this state, which earnings include gross earnings attributable to  
 420 such imported or caused to be imported petroleum products, in  
 421 accordance with subsection (b) of this section, shall pay a quarterly tax  
 422 on the consideration given or contracted to be given for such  
 423 petroleum product if the consideration given or contracted to be given  
 424 for all such deliveries during the quarterly period for which such tax is  
 425 to be paid exceeds three thousand dollars. Except as otherwise  
 426 provided in subdivision (3) of this subsection, the rate of tax shall be  
 427 (A) five per cent with respect to calendar quarters commencing prior to  
 428 July 1, 2005; (B) five and eight-tenths per cent with respect to calendar  
 429 quarters commencing on or after July 1, 2005, and prior to July 1, 2006;  
 430 (C) six and three-tenths per cent with respect to calendar quarters  
 431 commencing on or after July 1, 2006, and prior to July 1, 2007; (D)  
 432 seven per cent with respect to calendar quarters commencing on or  
 433 after July 1, 2007, and prior to July 1, 2008; (E) seven and one-half per  
 434 cent with respect to calendar quarters commencing on or after July 1,  
 435 2008, and prior to July 1, 2013; and (F) eight and one-tenth per cent  
 436 with respect to calendar quarters commencing on or after July 1, 2013.  
 437 Fuel in the fuel supply tanks of a motor vehicle, which fuel tanks are  
 438 directly connected to the engine, shall not be considered a delivery for  
 439 the purposes of this subsection.

440 (2) Consideration given or contracted to be given for petroleum  
 441 products, gross earnings from the first sale of which are exempt from  
 442 tax under subdivision (2) of subsection (b) of this section, shall be

443 exempt from tax.

444 (3) The rate of tax on consideration given or contracted to be given  
445 for grade number 6 fuel oil, as defined in regulations adopted  
446 pursuant to section 16a-22c, to be used exclusively by a company  
447 which, in accordance with census data contained in the Standard  
448 Industrial Classification Manual, United States Office of Management  
449 and Budget, 1987 edition, is included in code classifications 2000 to  
450 3999, inclusive, or in Sector 31, 32 or 33 in the North American  
451 Industrial Classification System United States Manual, United States  
452 Office of Management and Budget, 1997 edition, or number 2 heating  
453 oil used exclusively in a vessel primarily engaged in interstate  
454 commerce, which vessel qualifies for an exemption under section 12-  
455 412, as amended, shall be: (A) Four per cent with respect to calendar  
456 quarters commencing on or after July 1, 1998, and prior to July 1, 1999;  
457 (B) three per cent with respect to calendar quarters commencing on or  
458 after July 1, 1999, and prior to July 1, 2000; (C) two per cent with  
459 respect to calendar quarters commencing on or after July 1, 2000, and  
460 prior to July 1, 2001; and (D) one per cent with respect to calendar  
461 quarters commencing on or after July 1, 2001, and prior to July 1, 2002.

462 (d) The amount of tax reported to be due on such return shall be  
463 due and payable on or before the last day of the month next  
464 succeeding the quarterly period. The tax imposed under the provisions  
465 of this chapter shall be in addition to any other tax imposed by this  
466 state on such company. The Commissioner of Revenue Services shall  
467 provide the company submitting the tax with a credit on the amount of  
468 tax due in accordance with the estimates determined pursuant to  
469 subsection (f) of this section, which the company shall deposit into the  
470 underground storage tank petroleum clean-up account, established  
471 pursuant to section 22a-449f, as amended by this act.

472 (e) For the purposes of this chapter, the gross earnings of any  
473 producer or refiner of petroleum products operating a service station  
474 along the highways or interstate highways within the state pursuant to



475 a contract with the Department of Transportation or operating a  
476 service station which is used as a training or test marketing center  
477 under the provisions of subsection (b) of section 14-344d, shall be  
478 calculated by multiplying the volume of petroleum products delivered  
479 by any producer or refiner to any such station by such producer's or  
480 refiner's dealer tank wagon price or dealer wholesale price in the area  
481 of the service station.

482 (f) Not later than thirty days after every quarterly period, the  
483 Commissioner of Revenue Services shall conduct a review to estimate  
484 the percentage of the revenues collected pursuant to this section  
485 during such quarter that are necessary to fund the underground  
486 storage tank petroleum clean-up account in the amount of eighteen  
487 million dollars for the fiscal year ending June 30, 2007, and six million  
488 dollars annually thereafter, provided the amount in the account is not  
489 in excess of eighteen million dollars.

490 Sec. 5. Section 22a-449e of the 2006 supplement to the general  
491 statutes is repealed and the following is substituted in lieu thereof  
492 (*Effective October 1, 2006, and applicable to applications filed with the*  
493 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
494 *2006):*

495 (a) The [Commissioner of Environmental Protection, after  
496 consultation with the members of the board established by section 22a-  
497 449d,] Underground Storage Tank Petroleum Clean-Up Board shall  
498 adopt regulations in accordance with the provisions of chapter 54-  
499 setting forth procedures for reimbursement and payment from the  
500 account established under section 22a-449c, as amended by this act.  
501 Such regulations shall include such provisions as the [commissioner]  
502 board deems necessary to carry out the purposes of sections 22a-449a  
503 to 22a-449h, inclusive, as amended by this act, including, but not  
504 limited to, provisions for (1) notification of eligible parties of the  
505 existence of the account; (2) records required for submission of claims  
506 and reimbursement and payment; (3) periodic and partial

507 reimbursement and payment to enable responsible parties to meet  
508 interim costs, expenses and obligations; and (4) reimbursement and  
509 payment for costs, expenses and obligations incurred in connection  
510 with releases or suspected releases, and incurred after July 5, 1989, for  
511 releases discovered before or after said date provided reimbursement  
512 and payment shall not be made for costs, expenses and obligations  
513 incurred by a responsible party on or before said date.

514 (b) (1) The [commissioner] board, in accordance with the procedures  
515 set forth in subdivision (2) of this subsection, may prescribe a schedule  
516 for the maximum or range of amounts to be paid from the account for  
517 labor, equipment, materials, services or other costs, expenses or  
518 obligations paid or incurred as a result of a release or suspected  
519 release. Such schedule shall not be a regulation, as defined in section 4-  
520 166 and the adoption, modification, repeal or use of such schedule  
521 shall not be subject to the provisions of chapter 54 concerning a  
522 regulation. The amounts in any such schedule [may be less than and]  
523 shall [be] not be more than the usual, customary and reasonable  
524 amounts charged, as determined by the [commissioner] board.  
525 Notwithstanding the provisions of sections 22a-449a to 22a-449j,  
526 inclusive, as amended by this act, or any regulation adopted by the  
527 [commissioner] board pursuant to this section, upon adoption of any  
528 such schedule, the amount to be paid from the account for any labor,  
529 equipment, materials, services or other costs, expenses or other  
530 obligations, shall not exceed the amount established in any such  
531 schedule and such schedule. [may serve as guidance with respect to  
532 any costs, expenses or other obligations paid or incurred before the  
533 adoption of such schedule.]

534 (2) The [commissioner] board shall adopt, revise or revoke said  
535 schedule in accordance with the provisions of this subsection. [After  
536 consultation with the board, the commissioner] The board shall  
537 publish notice of intent to adopt, revise or revoke the schedule, or any  
538 portion thereof, in a newspaper having substantial circulation in the  
539 affected area. There shall be a comment period of thirty days following

540 publication of such notice during which interested persons may  
 541 submit written comments to the [commissioner] board. The  
 542 [commissioner] board shall publish notice of the adoption, revision or  
 543 revocation of the schedule, or part thereof, in a newspaper having  
 544 substantial circulation in the affected area. The [commissioner] board  
 545 shall, [upon request,] review and shall make any revisions the  
 546 [commissioner] board deems necessary to such schedule not [more]  
 547 less than once every two years or may do so more frequently as the  
 548 [commissioner] board deems necessary, or upon written request by  
 549 any person. The [commissioner, after consultation with the board,]  
 550 board may revise or revoke the schedule, in whole or in part, using the  
 551 procedures specified in this subsection. Any person may request, in  
 552 writing, that the [commissioner] board adopt, revise or revoke the  
 553 schedule in accordance with this subsection.

554 (c) Upon adoption of a schedule by the [commissioner] board  
 555 pursuant to subsection (b) of this section, the requirements concerning  
 556 obtaining three bids for services rendered contained in regulations  
 557 adopted pursuant to this section shall not apply, provided that the  
 558 schedule includes the subject services.

559 (d) An environmental professional, who has a currently valid and  
 560 effective license issued pursuant to section 22a-133v, shall use a seal, as  
 561 provided for in regulations adopted pursuant to section 22a-133v, to  
 562 provide written approval required under sections 22a-449c, as  
 563 amended by this act, 22a-449f, as amended by this act, and 22a-449p,  
 564 and any approval without a seal shall not constitute an approval of a  
 565 licensed environmental professional. The regulations adopted  
 566 pursuant to section 22a-133v regarding the use of a seal and the rules  
 567 of professional conduct shall apply to the duties of a licensed  
 568 environmental professional contained in sections 22a-449a to 22a-449i,  
 569 inclusive, as amended by this act, and 22a-449p.

570 Sec. 6. Section 22a-449f of the 2006 supplement to the general  
 571 statutes is repealed and the following is substituted in lieu thereof

572 (Effective October 1, 2006, and applicable to applications filed with the  
573 Underground Storage Tank Clean-Up Review Board on or after October 1,  
574 2006):

575 (a) A responsible party may apply to the Underground Storage  
576 Tank Petroleum Clean-Up Account Review Board established under  
577 section 22a-449d, as amended by this act, for reimbursement for costs  
578 paid and payment of costs incurred as a result of a release, or a  
579 suspected release, including costs of investigating and remediating a  
580 release, or a suspected release, incurred or paid by such party. [who is  
581 determined not to have been liable for any such release.] If a person  
582 other than a responsible party, claims to have suffered bodily injury,  
583 property damage or damage to natural resources from a release, the  
584 person with such claim shall make reasonable attempts to provide  
585 written notice to the responsible party of such claim and if such person  
586 cannot provide such notice or if the responsible party does not apply  
587 to the board for payment of such claim not later than sixty days after  
588 receipt of such notice or such other time as may be agreed to by the  
589 parties, the person holding such claim may apply to the board for  
590 payment for such damage or bodily injury.

591 (b) (1) In addition to all other applicable requirements, a person  
592 seeking payment or reimbursement from the account shall  
593 demonstrate that when the total costs, expenses or other obligations in  
594 response to a release or suspected release (A) are two hundred fifty  
595 thousand dollars or less, that all labor, equipment and materials  
596 provided after October 1, 2005, and all services and activities  
597 undertaken after October 1, 2005, shall be approved, in writing, either  
598 by the [commissioner] Commissioner of Environmental Protection or  
599 by a licensed environmental professional with a currently valid and  
600 effective license issued pursuant to section 22a-133v; and (B) exceeds  
601 two hundred fifty thousand dollars, that all labor, equipment and  
602 materials provided after October 1, 2005, and all services and activities  
603 undertaken after October 1, 2005, shall be approved, in writing, by the  
604 [commissioner] Commissioner of Environmental Protection or that the

605 commissioner has authorized, in writing, an environmental  
606 professional with a currently valid and effective license issued  
607 pursuant to section 22a-133v to approve, in writing, such labor,  
608 equipment, materials, services and activities, in lieu of a written  
609 approval by the commissioner. If the commissioner receives a written  
610 request for such authorization of an environmental professional with  
611 respect to a particular release or suspected release and does not  
612 approve or deny such request prior to thirty days after receipt, the  
613 request of the environmental professional shall be deemed to be  
614 authorized. If the commissioner denies a request for such  
615 authorization, the commissioner shall approve or disapprove such  
616 labor, equipment, materials, services and activities not later than thirty  
617 days after such denial. If the commissioner disapproves any such  
618 labor, equipment, materials, services or activities, the commissioner  
619 shall specify the labor, equipment, materials, services or activities  
620 disapproved, and shall provide a written statement of the reasons for  
621 such disapproval. The provisions of this subsection shall apply to all  
622 costs, expenses or other obligations for which a person is seeking  
623 payment or reimbursement from the account and the board shall not  
624 order [and the commissioner shall not] or make payment or  
625 reimbursement from the account for any cost, expense or other  
626 obligation, unless the person seeking such payment or reimbursement  
627 includes with an application or with a request for payment or  
628 reimbursement all written approvals required by this subdivision.

629 (2) The fees charged by a licensed environmental professional  
630 regarding labor or services rendered in response to a release or  
631 suspected release may be included in any application or request for  
632 payment or reimbursement submitted to the board. The amount to be  
633 paid or reimbursed from the account for such fees may also be  
634 established in the schedule adopted by the [commissioner] board  
635 pursuant to subsection (b) of section 22a-449e, as amended by this act.

636 (3) Providing it is true and accurate, a licensed environmental  
637 professional shall submit the following certification regarding any

638 approval provided under subdivision (1) of this subsection and section  
639 22a-449p: "I hereby agree that all of the labor, equipment, materials,  
640 services, and activities described in or covered by this certification was  
641 appropriate under the circumstances to abate an emergency or was  
642 performed as part of a plan specifically designed to ensure that the  
643 release or suspected release is or has been investigated in accordance  
644 with prevailing standards and guidelines and remediated consistent  
645 with and to achieve compliance with the remediation standards  
646 adopted under section 22a-133k of the general statutes."

647 (c) The board shall order reimbursement or payment from the  
648 account to a responsible party applicant for any cost paid or incurred,  
649 as the case may be, if, (1) such cost is or was incurred after July 5, 1989,  
650 (2) a responsible party was or would have been required to  
651 demonstrate financial responsibility under 40 CFR Part 280.90 et seq.  
652 as said regulation was published in the Federal Register of October 26,  
653 1988, for the underground storage tank or underground storage tank  
654 system from which the release emanated, whether or not such party is  
655 required to comply with said requirements on the date any such cost is  
656 incurred, provided if the state is the responsible party, the board may  
657 order payment from the account without regard to whether the state  
658 was or would have been required to demonstrate financial  
659 responsibility under said sections 40 CFR Part 280.90 et seq., (3) after  
660 the release, if any, the responsible party incurred a cost, expense or  
661 obligation for investigation, cleanup or for claims of a person other  
662 than a responsible party resulting from the release, or suspected  
663 release provided any such claim shall be required to be finally  
664 adjudicated or settled with the prior written approval of the board  
665 before an application for reimbursement or payment is made, (4) the  
666 board determines that [the cost, expense or other obligation is  
667 reasonable and that] there are not grounds for recovery specified in  
668 subdivision (1) or (3) of subsection (g) of this section, (5) the  
669 responsible party notified the commissioner of the release in  
670 accordance with regulations adopted pursuant to section 22a-449, as  
671 amended, or, where such regulations are not applicable, as soon as

672 practicable, and notified the board, as soon as practicable, of any claim  
673 by a person other than a responsible party, resulting from the release,  
674 (6) the responsible party, or, if a person other than a responsible party  
675 applies for payment or reimbursement from the account, then such  
676 person demonstrates the remediation, including any monitoring to  
677 determine the effectiveness of the remediation, for which payment or  
678 reimbursement is sought is not more stringent than that required by  
679 the remediation standards established pursuant to section 22a-133k,  
680 except to the extent the responsible party or such person demonstrates  
681 that it has been directed otherwise, in writing, by the commissioner, (7)  
682 [the responsible party, or, if a person other than a responsible party  
683 applies for payment or reimbursement from the account, then such  
684 person demonstrates that it does not have insurance, or a contract or  
685 other agreement to provide payment or reimbursement for any cost,  
686 expense or other obligation incurred in response to a release or  
687 suspected release, or if there is any such insurance, contract or other  
688 agreement, that any insurance coverage has been denied or is  
689 insufficient to cover the costs, expenses or other obligations, paid or  
690 incurred or that any contract or other agreement is not able to or is  
691 insufficient to cover the costs, expenses or other obligations, paid or  
692 incurred, for which payment or reimbursement is sought from the  
693 account] the costs, expenses or obligations for which reimbursement or  
694 payment is sought are consistent with the schedule adopted by the  
695 board pursuant to section 22a-449e, as amended by this act, or, if such  
696 costs, expenses or obligations were incurred prior to the effective date  
697 of such schedule or are not addressed by such schedule, are  
698 reasonable, (8) the responsible party demonstrates and the board  
699 determines that one of the milestones noted in section 22a-449p has  
700 been completed, and that the application was received by the board  
701 not later than one year after the completion of all or substantially all of  
702 the work or activities necessary to prepare the plan or report required  
703 by the applicable milestone, (9) the board determines what, if any,  
704 reductions to the amounts sought from the account should be made  
705 based upon the compliance evaluations performed pursuant to

706 subsection (d) of this section, and (10) if at the time [any] the initial  
707 application or request for payment or reimbursement [, including any  
708 supplemental application or request, is] with respect to a release or  
709 suspected release is submitted to the board, there [is] no longer are  
710 underground storage tank [system dispensing petroleum] systems on  
711 the property where the release or suspected release emanated or  
712 occurred, then the responsible party demonstrates, in addition to all  
713 other applicable requirements, that lack of compliance with provisions  
714 of the general statutes and regulations governing underground storage  
715 tank systems was not a proximate cause of the release or suspected  
716 release and that there are not grounds for recovery specified in  
717 subdivision (2) of subsection (g) of this section. In acting on an  
718 application or a request for payment or reimbursement, the board,  
719 using funds from the account, may contract with experts, including,  
720 but not limited to, attorneys and medical professionals, to better  
721 evaluate and defend against claims and negotiate claims by persons  
722 other than responsible parties. [The costs of the board for experts shall  
723 not be charged to the amount allocated to the Department of  
724 Environmental Protection pursuant to section 22a-449c.] If a person  
725 other than a responsible party applies to the board claiming to have  
726 suffered bodily injury, property damage or damage to natural  
727 resources, the board shall order reimbursement or payment from the  
728 account if such person demonstrates that subdivisions (1), (2), (6) and  
729 (7) of this subsection are satisfied, the board determines that as a result  
730 of a release or suspected release such person has suffered bodily  
731 injury, property damage or damage to natural resources, that the costs,  
732 expenses or other obligations incurred are reasonable and the person  
733 submitting such claim demonstrates that it has attempted to or has  
734 provided written notice of its claim to the responsible party as  
735 required in subsection (a) of this section and that the responsible party  
736 has not applied to the board for payment or reimbursement of this  
737 claim.

738 (d) (1) Except as provided in this subsection, if at the time [any] the  
739 initial application or request for payment or reimbursement is



740 submitted by a responsible party to the board, [including any  
 741 supplemental application or request, there is an] there are any  
 742 underground storage tank [system dispensing petroleum] systems on  
 743 the property where the release or suspected release emanated or  
 744 occurred, such application or request shall not be deemed complete  
 745 and shall not be acted upon by the board unless such application or  
 746 request includes a summary of the compliance status of all the  
 747 underground storage tank systems on the subject property. Any such  
 748 summary shall include an evaluation of compliance with the design,  
 749 construction, installation, notification, general operating, release  
 750 detecting, system upgrading, abandonment and removal date  
 751 requirements of the regulations adopted pursuant to [sections] section  
 752 22a-449, as amended, and with the requirements of section 22a-449o  
 753 and shall be prepared by an independent consultant on a form  
 754 [prescribed by or acceptable to the commissioner] developed by the  
 755 board, in consultation with the commissioner. The summary shall be  
 756 based on an evaluation of said underground storage tank systems  
 757 performed not more than one hundred eighty days before the board  
 758 receives an application or a request for reimbursement or payment,  
 759 except that with respect to any provision of the subject regulations  
 760 regarding record keeping, periodic monitoring or testing, the summary  
 761 shall be based on an evaluation of a one-year period terminating  
 762 within one hundred eighty days prior to the board's receipt of an  
 763 application or a request for payment or reimbursement. The summary  
 764 shall also include a full description of all corrective measures that have  
 765 been taken or that are being taken with regard to any noncompliance  
 766 identified in the compliance evaluation performed pursuant to this  
 767 subdivision.

768 (2) [With respect to any initial application or request for payment or  
 769 reimbursement regarding a release or suspected release the] The  
 770 provisions of subdivision (1) of this subsection shall apply [only] to  
 771 initial applications or requests received on or after January 1, 2006.  
 772 With respect to any supplemental application or request for payment  
 773 or reimbursement regarding a release or suspected release, for which

774 an initial application was submitted on or after January 1, 2006, the  
775 provisions of subdivision (1) of this subsection shall apply to each such  
776 supplemental application or request, [submitted to the board on or  
777 after January 1, 2006, regardless of when the initial application or  
778 request was submitted,] except that submission of a compliance  
779 summary shall not be required if at the time [a] such supplemental  
780 application or request is submitted, less than one year has passed since  
781 the performance of a compliance evaluation submitted with any prior  
782 application or request.

783 (3) The cost of hiring an independent consultant to perform a  
784 compliance evaluation, as required by this subsection, shall be eligible  
785 for payment or reimbursement from the account up to a maximum of  
786 one thousand dollars per compliance evaluation, provided the  
787 evaluation is in conformance with the requirements of this subsection  
788 and includes all underground storage tank systems on the property  
789 where a release or suspected release emanated or occurred. If the  
790 schedule adopted by the [commissioner] board pursuant to subsection  
791 (b) of section 22a-449e, as amended by this act, includes an amount for  
792 performing a compliance evaluation, upon adoption of any such  
793 schedule, the amount eligible for payment or reimbursement for  
794 performing a compliance evaluation shall be the amount prescribed in  
795 any such schedule.

796 (4) Nothing in this subsection shall affect the continued applicability  
797 of any decision of the board to (A) deny reimbursement or payment  
798 from the account, or (B) provide only partial payment or  
799 reimbursement regarding all applications or requests for payment or  
800 reimbursement from the account. Any such decision shall remain in  
801 effect and shall not be subject to reconsideration or reevaluation as a  
802 result of this subsection.

803 [(5) Except as provided for in this subdivision, if at the time any  
804 application or request for payment or reimbursement, including any  
805 supplemental application or request, is submitted, there is no

806 underground storage tank system dispensing petroleum on the  
807 property where the release or suspected release emanated or occurred,  
808 any such application or request shall be subject to the provisions of  
809 subdivision (10) of subsection (c) of this section, even where a prior  
810 application or request was subject to the provisions of this subsection.  
811 The provisions of this subdivision shall not apply to an application or  
812 request for payment or reimbursement for annual groundwater  
813 remedial actions, including the preparation of a groundwater remedial  
814 action progress report, performed pursuant to subdivision (6) of  
815 section 22a-449p.]

816 (e) (1) If the compliance evaluation summary performed pursuant to  
817 subsection (d) of this section indicates that any of the violations noted  
818 in this subdivision exist with respect to any underground storage tank  
819 or underground storage tank system on the property at which a release  
820 or suspected release occurred and any such violations have not been  
821 fully corrected by the time an application or request for reimbursement  
822 is submitted to the board, the board shall reduce any payment or  
823 amount to be reimbursed as follows: (A) A one hundred per cent  
824 reduction of the payment or amount to be reimbursed for failure to  
825 meet the tank or piping construction requirements of section 22a-449o  
826 or the regulations adopted pursuant to section 22a-449, as amended, or  
827 for failure to report the release to the commissioner as required by this  
828 section, (B) a seventy-five per cent reduction of the payment or amount  
829 to be reimbursed for failure to have properly functioning cathodic  
830 protection, spill prevention, overfill prevention, or release detection as  
831 required by the regulations adopted pursuant to section 22a-449, as  
832 amended. Notwithstanding the provisions of this subsection, the board  
833 may reduce any amount to be paid or reimbursed based on any other  
834 violation of the provisions of the general statutes or regulations of  
835 Connecticut state agencies regarding ownership or operation of an  
836 underground storage tank system if such violation has not been fully  
837 corrected by the time an application or request for reimbursement is  
838 submitted to the board.

839 (2) Nothing in this subsection and no determination by the board of  
840 any issue of fact or law shall affect the authority of the commissioner  
841 under any other statute or regulations, including, but not limited to,  
842 taking any enforcement action based upon the violations identified in  
843 any compliance evaluation performed pursuant to subsection (d) of  
844 this section.

845 (f) (1) For all work or services performed or materials provided  
846 before October 1, 2004, the board shall not order payment or  
847 reimbursement from the account for any cost paid or incurred, unless  
848 when seeking payment or reimbursement, the application or any  
849 submission regarding work, services or materials that have been pre-  
850 authorized by the board is received by the board on or before April 1,  
851 2005.

852 (2) For purposes of this subsection, work or services shall be  
853 deemed rendered or performed on the date such work is rendered or  
854 performed and a material shall be deemed provided on the date a  
855 material is made available for use.

856 (3) After June 30, 2005, the board shall not order payment or  
857 reimbursement from the account for any cost, expense or other  
858 obligation, paid or incurred, unless the application or request for  
859 payment or reimbursement is received by the board not later than one  
860 year after the completion of all or substantially all of the work or  
861 activities necessary to prepare the plan or report required by the  
862 milestones set forth in section 22a-449p.

863 (g) The Attorney General, upon the request of the board, [or the  
864 commissioner,] may institute an action in the superior court for the  
865 judicial district of Hartford to recover the amounts specified in this  
866 section from any person who owns or operates an underground  
867 storage tank system at the time a release emanates or occurs from such  
868 system or any person who owns the real property on which a release  
869 emanates or occurs, provided such person owned the real property at  
870 or any time after the release emanates or occurs until the time that a

871 final remediation action report is submitted by a licensed  
872 environmental professional or approved by the commissioner  
873 pursuant to subdivision (7) of section 22a-449p, if: (1) Prior to the  
874 occurrence of the release, the underground storage tank or  
875 underground storage tank system from which the release emanated  
876 was required by regulations adopted under section 22a-449, as  
877 amended by this act, to submit a notification to the commissioner but  
878 [no such notification was provided] the responsible party knowingly  
879 and intentionally failed to notify the commissioner; (2) the release  
880 results from a reckless, wilful, wanton or intentional act or omission of  
881 [such person or a negligent act or omission of such person that  
882 constitutes noncompliance with the general statutes or regulations  
883 governing the installation, operation and maintenance of underground  
884 storage tanks] a responsible party; or (3) the release occurs from an  
885 underground storage tank or system which is not in compliance with a  
886 final order issued by the commissioner pursuant to this chapter or a  
887 final judgment issued by a court concerning noncompliance with a  
888 requirement of this chapter and such lack of compliance with the final  
889 order or final judgment was a proximate cause of such release; or (4)  
890 payment has been made from the account [, including payment to the  
891 commissioner pursuant to subsection (i) of this section,] to a person  
892 other than a person against whom an action may be brought pursuant  
893 to this subsection. All costs to the state relating to actions to recover  
894 such payments, including, but not limited to, reasonable attorneys'  
895 fees, shall initially be paid from the underground storage tank  
896 petroleum clean-up account. In any recovery the board [or the  
897 commissioner] is entitled to recover from such person (A) all payments  
898 made from the account with respect to a release or suspected release,  
899 (B) [all payments made by the commissioner pursuant to subsection (i)  
900 of this section with respect to a release or suspected release, (C)]  
901 interest on such payments at a rate of ten per cent per year from the  
902 date such payments were made, and [(D)] (C) all costs of the state  
903 relating to actions to recover such payments, including, but not limited  
904 to, reasonable attorneys' fees. All actions brought pursuant to this

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905 section shall have precedence in the order of trial, as provided in  
 906 section 52-191. If the Attorney General has filed an action against a  
 907 person seeking recovery of the amounts specified in this subsection or  
 908 if the commissioner sends a person a demand letter regarding costs  
 909 incurred by the state pursuant to section 22a-451, any such person  
 910 against whom an action has been brought or who receives a demand  
 911 letter shall not submit an application or request for payment or  
 912 reimbursement to the board seeking payment or reimbursement of any  
 913 such amount sought by the Attorney General or by the commissioner.  
 914 If any such application or request for payment or reimbursement is  
 915 submitted, the board shall not take any action regarding any such  
 916 application or request.

917 (h) The board shall render its decision not more than ninety days  
 918 after receipt of an application from a person, provided, in the case of a  
 919 second or subsequent application, the board shall render its decision  
 920 not more than forty-five days after receipt of such application. A copy  
 921 of the decision shall be sent to [the commissioner and] the person  
 922 seeking payment or reimbursement by certified mail, return receipt  
 923 requested. The [commissioner or any person aggrieved by the decision  
 924 of the board] person seeking payment or reimbursement may, within  
 925 twenty days from the date of issuance of such decision, request a  
 926 hearing before the board in accordance with the provisions of chapter  
 927 54. After such hearing, the board shall consider the information  
 928 submitted to it and affirm or modify its decision on the application. A  
 929 copy of the affirmed or modified decision shall be sent to [all parties to  
 930 the hearing] the person seeking payment or reimbursement by  
 931 certified mail, return receipt requested. Once the board renders a  
 932 decision regarding an application or request for payment or  
 933 reimbursement and no hearing has been requested pursuant to this  
 934 subsection regarding any such decision, the costs, expenses or other  
 935 obligations addressed by any such decision shall not be resubmitted in  
 936 any other application or request.

937 (i) Whenever the commissioner determines that as a result of a

938 release, as defined in section 22a-449a, as amended by this act, or a  
939 suspected release, a clean-up is necessary, including, but not limited to,  
940 actions to prevent or abate pollution or a potential source of pollution  
941 and to provide potable drinking water [.] and the commissioner [may  
942 undertake such actions using not more than one million dollars from  
943 the underground storage tank petroleum clean-up account for each  
944 release or suspected release from an underground storage tank or an  
945 underground storage tank system for which the responsible party is  
946 the state or for which a responsible party was or would have been  
947 required to demonstrate financial responsibility under 40 CFR Part  
948 280.90 et seq., as said regulation was published in the Federal Register  
949 of October 26, 1988] undertakes such a clean-up, the commissioner  
950 may apply for reimbursement or payment from the account pursuant  
951 to this section.

952 (j) (1) If, [through] with respect to a release or suspected release for  
953 which an initial application or request for payment or reimbursement  
954 was received by the board before June 1, 2005, the board has  
955 determined that a person has paid or incurred costs, expenses or other  
956 obligations that are eligible for payment or reimbursement from the  
957 account, the following shall apply with respect to any supplemental  
958 application or request for payment or reimbursement. [the following  
959 shall apply.] The [commissioner] board may identify a category of  
960 activities, costs, expenses, or other obligations that are less than one  
961 hundred thousand dollars for which, in lieu of full payment, the board  
962 may approve a percentage of the costs, expenses or other obligations  
963 paid or incurred. In [making any such recommendation to the board,  
964 the commissioner] identifying such categories and approving such  
965 percentages, the board shall consider the amounts previously paid  
966 from the account and any other information the [commissioner] board  
967 deems relevant. Any such percentage shall be not more than, but may  
968 be less than, ninety per cent of the average amount, as determined by  
969 the [commissioner] board, previously paid from the account for any  
970 activity, cost, expense or obligation. [The board shall approve or  
971 disapprove, but shall not modify, payment of the percentage

972 recommended by the commissioner pursuant to this subdivision.] The  
973 [commissioner] board may, using the procedures specified in this  
974 subdivision, [recommend] make changes to any percentage previously  
975 approved by the board under this subdivision.

976 (2) If the board approves payment of the percentage, [recommended  
977 by the commissioner,] a person with a supplemental application or  
978 request for payment or reimbursement may agree to accept the  
979 percentage payment approved by the board. Any such acceptance  
980 shall be in writing, signed by the person seeking payment or  
981 reimbursement and shall acknowledge that the person is agreeing to  
982 accept less than the full amount sought by such person for the costs,  
983 expenses or other obligations covered by such acceptance. [If the  
984 commissioner has prescribed forms, any such acceptance shall be  
985 made using the forms prescribed by the commissioner.] The board  
986 may prescribe a form to be used for any such acceptance. Once a  
987 completed written acceptance is received, the board shall, not later  
988 than ninety days after receiving such acceptance, determine whether to  
989 order payment or reimbursement from the account. Any such  
990 determination by the board shall be limited to whether the costs,  
991 expenses or other obligations are within those for which the board has  
992 approved payment pursuant to subdivision (1) of this subsection.

993 (3) Any amount ordered to be paid or reimbursed by the board shall  
994 be considered full payment for any such activity, expense or other  
995 obligation and a person shall not seek any additional reimbursement  
996 from the account for any such activity, expense or other obligation. The  
997 categories or activities for which the [commissioner recommends]  
998 board approves payment of a percentage pursuant to this subsection  
999 may constitute all or a portion of the amounts sought in a  
1000 supplemental application or supplemental request for payment or  
1001 reimbursement.

1002 (k) Notification to the commissioner pursuant to regulations  
1003 adopted pursuant to section 22a-449, as amended by this act, shall



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1004 constitute compliance with any regulation adopted pursuant to section  
1005 22a-449e, as amended by this act, regarding notification to the board of  
1006 a release. The commissioner shall promptly notify the board of any  
1007 notification of a release received by the commissioner.

1008 Sec. 7. Section 22a-449g of the general statutes is repealed and the  
1009 following is substituted in lieu thereof (*Effective October 1, 2006, and*  
1010 *applicable to applications filed with the Underground Storage Tank Clean-Up*  
1011 *Review Board on or after October 1, 2006*):

1012 The [Commissioner of Environmental Protection or any] person  
1013 [aggrieved by a decision of the review board established under section  
1014 22a-449d] seeking payment or reimbursement may appeal from such  
1015 decision by the board following a hearing pursuant to section 22a-449f,  
1016 as amended by this act, to the superior court for the judicial district of  
1017 New Britain within twenty days after the issuance of such decision.  
1018 Such appeal shall be in accordance with chapter 54. All such appeals  
1019 shall be heard by the court without a jury, and shall have precedence  
1020 in the order of trial as provided in section 52-192. If the [review] board  
1021 orders reimbursement or payment from the account [ ] for a portion of  
1022 the amount sought, but denies reimbursement or payment for the  
1023 remainder, and the person seeking payment or reimbursement and a  
1024 party to the appeal contests [any portion of the ordered reimbursement  
1025 or payment] such denial, the uncontested portion of the ordered  
1026 reimbursement or payment shall be made, notwithstanding the  
1027 pendency of the appeal.

1028 Sec. 8. (*Effective October 1, 2006*) (a) Not later than October 1, 2006,  
1029 the Underground Storage Tank Petroleum Clean-Up Account Review  
1030 Board shall retain an expert to determine the exact nature and scope of  
1031 the backlog of applications filed under section 22a-449f of the 2006  
1032 supplement to the general statutes, as amended by this act. The board  
1033 may use not more than two hundred fifty thousand dollars of the  
1034 funds allocated for administrative costs pursuant to section 22a-449c of  
1035 the 2006 supplement to the general statutes, as amended by this act, to

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SECTION

1036 pay for said expert. Once having determined the amount necessary to  
1037 extinguish the claims held in excess of the statutory time requirements  
1038 for payment of claims, as provided in said section 22a-449f, the board  
1039 shall order payments from the underground storage tank petroleum  
1040 clean-up account to extinguish all existing claims held longer than  
1041 ninety days of said time requirements. The board shall make payments  
1042 as are necessary pursuant to this subsection not later than one hundred  
1043 eighty days after the order.

1044 (b) Not later than October 1, 2006, the board shall retain an expert to  
1045 determine whether it is feasible for the board to provide owners and  
1046 operators of underground storage tank systems with evidence of  
1047 financial responsibility required by federal law by utilizing  
1048 reinsurance for coverage amounts in excess of two hundred fifty  
1049 thousand dollars and up to and including two million dollars. The  
1050 board may use not more than two hundred fifty thousand dollars of  
1051 the funds allocated for administrative costs pursuant to section 22a-  
1052 449c of the 2006 supplement to the general statutes, as amended by this  
1053 act, to pay for said expert. Not later than February 1, 2007, the board  
1054 shall report to the joint standing committee of the General Assembly  
1055 having cognizance of matters relating to the environment, in  
1056 accordance with the provisions of section 11-4a of the general statutes,  
1057 concerning the result of its analysis.

1058 Sec. 9. (Effective October 1, 2006) Sections 22a-449, 22a-449a, 22a-449c,  
1059 22a-449d, 22a-449e, 22a-449f, and 22a-449p of the 2006 supplement to  
1060 the general statutes, as amended by this act, shall, except where  
1061 otherwise stated in the text of said sections, be applicable to  
1062 applications to the underground storage tank petroleum clean-up  
1063 account that were filed on or after June 30, 2005, and before October 1,  
1064 2006.

1065 Sec. 10. Section 22a-449b of the general statutes is repealed. (Effective  
1066 October 1, 2006)

[1067]

465

Raised Bill No.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449a
Sec. 2	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449c
Sec. 3	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449d
Sec. 4	<i>October 1, 2006</i>	12-587
Sec. 5	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449e
Sec. 6	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449f
Sec. 7	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449g
Sec. 8	<i>October 1, 2006</i>	New section
Sec. 9	<i>October 1, 2006</i>	New section

Sec. 10	October 1, 2006	Repealer section
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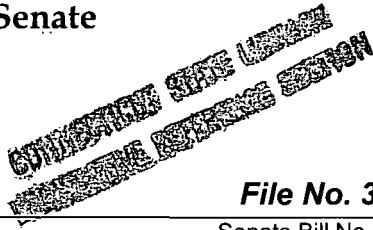
**Statement of Purpose:**

To revise the commercial underground storage tank program provisions.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*



Senate



General Assembly

**File No. 379**

February Session, 2006

Senate Bill No. 465

*Senate, April 5, 2006*

The Committee on Environment reported through SEN. FINCH of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

**AN ACT CONCERNING THE UNDERGROUND STORAGE TANK  
PETROLEUM CLEAN-UP ACCOUNT.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-449a of the 2006 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2006, and applicable to applications filed with the*  
4 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
5 *2006):*

6 As used in this section and sections 22a-449c to 22a-449m, inclusive,  
7 as amended by this act, and 22a-449p:

8 (1) "Petroleum" means crude oil, crude oil fractions and refined  
9 petroleum fractions, including gasoline, kerosene, heating oils and  
10 diesel fuels;

11 (2) "Release" means any spilling, leaking, pumping, pouring,  
12 emitting, emptying, discharging, injecting, escaping, leaching,

13 dumping or disposing of petroleum from any underground storage  
14 tank or underground storage tank system;

15 (3) "Responsible party" means (A) for an application or request for  
16 payment or reimbursement received by the board before [July 1, 2005]  
17 October 1, 2006, or for a determination regarding a person's status as a  
18 responsible party or a third party with respect to a specific release or  
19 suspected release made by the board before [July 1, 2005] October 1,  
20 2006, any person who owns or operates an underground storage tank  
21 or underground storage tank system from which a release or suspected  
22 release emanates, (B) for an application or request for payment or  
23 reimbursement received by the board on or after [July 1, 2005] October  
24 1, 2006, any person who (i) at any time owns, leases, uses or has an  
25 interest in the real property on which an underground storage tank  
26 system is or was located from which there is or has been a release or  
27 suspected release, regardless of when the release or suspected release  
28 occurred, or whether such person owned, leased, used or had an  
29 interest in the real property at the time the release or suspected release  
30 occurred, or whether such person owned, operated, leased or used the  
31 underground storage tank system from which the release or suspected  
32 release occurred, (ii) at any time owns, leases, operates, uses, or has an  
33 interest in an underground storage tank system from which there is or  
34 has been a release or suspected release, regardless of when the release  
35 or suspected release occurred or whether such person owned, leased,  
36 operated, used or had an interest in the underground storage tank  
37 system at the time the release or suspected release occurred, or (iii) is  
38 affiliated with a person described in subclause (i) or (ii) of this  
39 subparagraph through a direct or indirect familial relationship or any  
40 [contractual,] corporate or financial relationship;

41 (4) "Underground storage tank" means a tank or combination of  
42 tanks, including underground pipes connected thereto, used to contain  
43 an accumulation of petroleum, whose volume is ten per cent or more  
44 beneath the surface of the ground, including the volume of  
45 underground pipes connected thereto;

46 (5) "Underground storage tank system" means an underground  
47 storage tank and any associated ancillary equipment and containment  
48 system;

49 (6) "Residential underground heating oil storage tank system"  
50 means (A) an underground storage tank system used in connection  
51 with residential real property composed of four residential units or  
52 fewer, or (B) a storage tank system and any associated ancillary  
53 equipment used in connection with residential real property composed  
54 of four residential units or fewer; and

55 (7) "Person" means any individual, firm, partnership, association,  
56 syndicate, company, trust, corporation, limited liability company,  
57 municipality, agency or political or administrative subdivision of the  
58 state, or other legal entity of any kind.

59 Sec. 2. Section 22a-449c of the 2006 supplement to the general  
60 statutes is repealed and the following is substituted in lieu thereof  
61 (*Effective October 1, 2006, and applicable to applications filed with the*  
62 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
63 *2006*):

64 (a) (1) There is established an account to be known as the  
65 "underground storage tank petroleum clean-up account". The  
66 underground storage tank petroleum clean-up account shall be an  
67 account [of the Environmental Quality Fund. Notwithstanding any  
68 provision of the general statutes to the contrary, any moneys collected  
69 shall be deposited in the Environmental Quality Fund and credited to  
70 the underground storage tank petroleum clean-up account] that shall  
71 be held by the Underground Storage Tank Clean-Up Review Board  
72 established under section 22a-449d, as amended by this act. The board  
73 may use not more than one million five hundred thousand dollars  
74 from the account for administrative costs. Any balance remaining in  
75 said account at the end of any fiscal year shall be carried forward in  
76 said account for the fiscal year next succeeding.

77 (2) The account shall be used by the [Commissioner of

78 Environmental Protection] Underground Storage Tank Clean-Up  
79 Review Board to provide money for reimbursement or payment  
80 pursuant to section 22a-449f, as amended by this act, to responsible  
81 parties or parties supplying goods or services, for costs, expenses and  
82 other obligations paid or incurred, as the case may be, as a result of  
83 releases, and suspected releases, costs of investigation and remediation  
84 of releases and suspected releases, and for claims by a person other  
85 than a responsible party for bodily injury, property damage and  
86 damage to natural resources that have been finally adjudicated or  
87 settled with the prior written consent of the board. The [commissioner]  
88 board may also make payment from the account to an assignee who is  
89 in the business of receiving assignments of amounts approved by the  
90 board, but not yet paid from the account, provided the party making  
91 any such assignment, using a form approved by the [commissioner]  
92 board, directs the [commissioner] board to pay such assignee, that no  
93 cost of any assignment shall be borne by the account and that the state  
94 and its agencies shall not bear any liability with respect to any such  
95 assignment.

96 (3) Notwithstanding the provisions of this section regarding  
97 reimbursements of parties pursuant to section 22a-449f, as amended by  
98 this act, and regulations adopted pursuant to section 22a-449e, as  
99 amended by this act, and regardless of when an application for  
100 payment or reimbursement from the account may have been  
101 submitted to the board, [payment or reimbursement shall be made in  
102 accordance with the following: (A) After] after June 1, 2004, no  
103 payment or reimbursement shall be made for any costs, expenses and  
104 other obligations paid or incurred for remediation, including any  
105 monitoring to determine the effectiveness of the remediation, of a  
106 release to levels more stringent than or beyond those specified in the  
107 remediation standards established pursuant to section 22a-133k, except  
108 to the extent the applicant demonstrates that it has been directed  
109 otherwise, in writing, by the [commissioner; (B) after June 1, 2005, no  
110 payment or reimbursement from the account shall be made to any  
111 person for diminution in property value or interest; and (C) after June  
112 1, 2005, no payment or reimbursement from the account shall be made



113 for attorneys' fees or other costs of legal representation paid or  
 114 incurred as a result of a release or suspected release (i) in excess of five  
 115 thousand dollars to any responsible party, (ii) in excess of ten  
 116 thousand dollars to any person other than a responsible party, and (iii)  
 117 by a responsible party regarding the defense of claims brought by  
 118 another person] Commissioner of Environmental Protection. In  
 119 addition, notwithstanding the provisions of this section regarding  
 120 reimbursements of parties pursuant to section 22a-449f, as amended by  
 121 this act, the responsible party shall bear all costs of the release that are  
 122 less than ten thousand dollars and all persons shall bear all costs of the  
 123 release that are more than one million dollars, except that for any such  
 124 release which was reported to the department prior to December 31,  
 125 1987, and for which more than five hundred thousand dollars has been  
 126 expended by the responsible party to remediate such release prior to  
 127 June 19, 1991, the responsible party for the release shall bear all costs of  
 128 such release which are less than ten thousand dollars or more than five  
 129 million dollars, provided the portion of any reimbursement or  
 130 payment in excess of three million dollars may, at the discretion of the  
 131 [commissioner] board, be made in annual payments for up to a five-  
 132 year period. [There shall be allocated to the department annually, for  
 133 administrative costs, two million dollars.]

134 (b) There is established a subaccount within the underground  
 135 storage tank petroleum clean-up account to be known as the  
 136 "residential underground heating oil storage tank system clean-up  
 137 subaccount" to be used solely for the provision of reimbursements  
 138 under sections 22a-449l and 22a-449n, for the remediation of  
 139 contamination attributed to residential underground heating oil  
 140 storage tank systems. The subaccount shall hold the proceeds of the  
 141 bond funds allocated pursuant to section 51 of public act 00-167\*.

142 [(c) There is established a subaccount within the underground  
 143 storage tank petroleum clean-up account to be known as the "pay for  
 144 performance subaccount" with which the commissioner may  
 145 implement a program, in consultation with the board, in which  
 146 reimbursement or repayment in accordance with this section is based

147 upon the achievement of environmental milestones or results. The  
148 commissioner, with the approval of the board, may enter into contracts  
149 to implement any such program.

150 (d) (1) If an initial application or request for payment or  
151 reimbursement is received by the board before July 1, 2005, no  
152 supplemental application or request for payment or reimbursement  
153 shall be submitted to the board on or after October 1, 2009, regarding  
154 costs, expenses or other obligations paid or incurred in response to the  
155 release or suspected release noted in any such initial application or  
156 request for payment or reimbursement. The provisions of this  
157 subdivision shall apply regardless of whether the cost, expense or  
158 other obligation was paid or incurred before October 1, 2009, and no  
159 reimbursement or payment from the account shall be ordered by the  
160 board or made by the commissioner regarding any such supplemental  
161 application or request for payment or reimbursement received by the  
162 board on or after the October 1, 2009, deadline established in this  
163 subdivision.

164 (2) If an initial application or request for payment or reimbursement  
165 is received by the board on or after July 1, 2005, no supplemental  
166 application or request for payment or reimbursement shall be  
167 submitted to the board more than five years after the date that the  
168 initial application or request for payment or reimbursement was  
169 received by the board, regarding costs, expenses or other obligations  
170 paid or incurred in response to the release or suspected release noted  
171 in such initial application or request for payment or reimbursement.  
172 The provisions of this subdivision shall apply regardless of whether a  
173 cost, expense or other obligation was paid or incurred before the  
174 expiration of the five-year deadline established in this subdivision and  
175 no reimbursement or payment from the account shall be ordered by  
176 the board or made by the commissioner regarding any such  
177 supplemental application or request for payment or reimbursement  
178 received by the board after the five-year deadline established in this  
179 subdivision.

067

180 (3) Notwithstanding the provisions of subsection (i) of section 22a-  
181 449f, if an application or request for payment or reimbursement is not  
182 brought before the board for a decision not later than six months after  
183 having been received by the board, then six months shall be added to  
184 the deadline applicable pursuant to subdivision (1) or (2) of this  
185 subsection, provided no more than two years shall be added to the  
186 deadline established pursuant to subdivision (1) or (2) of this  
187 subsection regardless of whether one or more applications or requests  
188 for payment or reimbursement have been received by the board but  
189 have not been brought before the board for a decision not later than six  
190 months after receipt. In addition, if the commissioner determines that  
191 an application or request for payment or reimbursement is ready for  
192 decision by the board and such application or request has been placed  
193 on the agenda for the meeting of the board, but cannot be brought  
194 before the board because the board is unable to meet or cannot act on  
195 such application or request, the deadlines established pursuant to  
196 subdivision (1) or (2) of this subsection shall also be extended only for  
197 that period that the board is unable to meet or is unable to act on such  
198 application or request.

199 (4) The provisions of this subsection shall not apply to annual  
200 groundwater remedial actions, including the preparation of a  
201 groundwater remedial action progress report, performed pursuant to  
202 subdivision (6) of section 22a-449p. Notwithstanding the provisions of  
203 this subsection, the board may continue to receive applications or  
204 requests for payment or reimbursement and provided all other  
205 requirements have been met, may order payment or reimbursement  
206 from the account for such activities.

207 (e) (1) Any person who has insurance, or a contract or other  
208 agreement to provide payment or reimbursement for any costs,  
209 expense or other obligation paid or incurred in response to a release or  
210 suspected release may submit an application or request seeking  
211 payment or reimbursement from the account to the board, provided  
212 any such application or request for payment or reimbursement shall be  
213 subject to all applicable requirements, including, but not limited to,

214 subdivision (7) of subsection (c) of section 22a-449f.

215 (2) Any person who at any time receives or expects to receive  
216 payment or reimbursement from any source other than the account for  
217 any cost, expense, obligation, damage or injury for which such person  
218 has received or has applied for payment or reimbursement from the  
219 account, shall notify the board, in writing, of such supplemental or  
220 expected payment and shall, not more than thirty days after receiving  
221 such supplemental payment, repay the underground storage tank  
222 petroleum clean-up fund all such amounts received from any other  
223 source.

224 (3) If the board determines that a person is seeking or has sought  
225 payment or reimbursement for any cost, expense, obligation, damage  
226 or injury from the account and that payment or reimbursement for any  
227 such cost, expense, obligation, damage or injury is actually or  
228 potentially available to any such person from any source other than the  
229 account, the board may impose any conditions it deems reasonable  
230 regarding any amount it orders to be paid from the account.]

231 Sec. 3. Section 22a-449d of the 2006 supplement to the general  
232 statutes is repealed and the following is substituted in lieu thereof  
233 (*Effective October 1, 2006, and applicable to applications filed with the*  
234 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
235 *2006*):

236 (a) There is established an Underground Storage Tank Petroleum  
237 Clean-Up Account Review Board. Upon application for reimbursement  
238 or payment pursuant to section 22a-449f, as amended by this act, the  
239 board shall determine, based on the provisions of sections 22a-449a to  
240 22a-449i, inclusive, as amended by this act, and all regulations adopted  
241 pursuant to said sections 22a-449a to 22a-449i, inclusive, whether or  
242 not to order payment or reimbursement from the account. The board  
243 shall receive reports from the Department of Environmental Protection  
244 concerning a release relating to an application. The board shall have  
245 the authority to order payment from the residential underground  
246 heating oil storage tank system clean-up subaccount to registered

247 contractors pursuant to section 22a-449l, or to owners pursuant to  
 248 section 22a-449n, for reasonable costs associated with the remediation  
 249 of a residential underground heating oil storage tank system based on  
 250 the guidelines established pursuant to subsection (c) of this section;  
 251 hold hearings, administer oaths, subpoena witnesses and documents  
 252 through its chairperson when authorized by the board; designate an  
 253 agent to perform such duties of the board as it deems necessary except  
 254 the duty to render a final decision to order reimbursement or payment  
 255 from the account; and provide by notice, printed on any form, that any  
 256 false statement made thereof or pursuant thereto is punishable  
 257 pursuant to section 53a-157b. Not later than January 1, 2007, and  
 258 annually thereafter, the board shall report to the joint standing  
 259 committee of the General Assembly having cognizance of matters  
 260 relating to the environment regarding the continuing needs of the  
 261 program.

262 (b) The board shall consist of the [Commissioners] Commissioner of  
 263 Environmental Protection, and [Revenue Services,] the Secretary of the  
 264 Office of Policy and Management, [and the State Fire Marshal,] or their  
 265 designees; one member representing the Connecticut Petroleum  
 266 Council, appointed by the speaker of the House of Representatives;  
 267 one member representing the Service Station Dealers Association,  
 268 appointed by the majority leader of the Senate; one member of the  
 269 public, appointed by the majority leader of the House of  
 270 Representatives; one member representing the Independent  
 271 Connecticut Petroleum Association, appointed by the president pro  
 272 tempore of the Senate; one member representing the Gasoline and  
 273 Automotive Service Dealers of America, Inc., appointed by the  
 274 minority leader of the House of Representatives; one member  
 275 representing a municipality with a population greater than one  
 276 hundred thousand, appointed by the Governor; one member  
 277 representing a municipality with a population of less than one  
 278 hundred thousand, appointed by the minority leader of the Senate; one  
 279 member representing a [small manufacturing company which employs  
 280 fewer than seventy-five persons] Connecticut-based insurance  
 281 company with expertise in environmental impairment insurance.

282 appointed by the speaker of the House of Representatives; one  
283 member experienced in the delivery, installation, and removal of  
284 residential underground petroleum storage tanks and remediation of  
285 contamination from such tanks, appointed by the president pro  
286 tempore of the Senate; and one member who is an environmental  
287 professional licensed under section 22a-133v and is experienced in  
288 investigating and remediating contamination attributable to  
289 underground petroleum storage tanks, appointed by the Governor.  
290 The board shall annually elect one of its members to serve as  
291 chairperson.

292 (c) Not later than July 1, 2000, the board shall establish guidelines  
293 for determining what costs are reasonable for payment under sections  
294 22a-449j and 22a-449n and shall establish requirements for financial  
295 assurance, training and performance standards for registered  
296 contractors, as defined in said sections 22a-449j and 22a-449n. The  
297 board shall make payment pursuant to section 22a-449n to the owner  
298 at a rate not to exceed one hundred fifty-seven dollars per ton of  
299 contaminated soil removed which shall be considered as full payment  
300 for all eligible costs for remediation. For any claim filed pursuant to  
301 section 22a-449n where no contaminated soil is removed the board  
302 shall reimburse eligible costs in accordance with the guidelines  
303 pursuant to this section.

304 (d) To the extent that funds are available in the residential  
305 underground heating oil storage tank system clean-up subaccount, the  
306 board may order payment from such subaccount to registered  
307 contractors for reimbursement of eligible costs for services associated  
308 with the remediation of a residential underground heating oil storage  
309 tank system prior to July 1, 2001, to owners of such systems for  
310 payment for eligible costs incurred after July 1, 2001. No such payment  
311 shall be authorized unless the board deems the costs reasonable based  
312 on the guidelines established pursuant to subsection (c) of this section.  
313 Notwithstanding the provisions of this subsection, if the board  
314 determines that the owner may not receive reimbursement payment  
315 from the contractor, the board may, if reimbursement has not been sent

316 to the contractor, directly reimburse the owner of such system for  
317 eligible costs incurred by the owner and paid to the registered  
318 contractor for services associated with a remediation of a system prior  
319 to July 1, 2001.

320 Sec. 4. Section 12-587 of the 2006 supplement to the general statutes  
321 is repealed and the following is substituted in lieu thereof (*Effective*  
322 *October 1, 2006*):

323 (a) As used in this chapter: (1) "Company" includes a corporation,  
324 partnership, limited partnership, limited liability company, limited  
325 liability partnership, association, individual or any fiduciary thereof;  
326 (2) "quarterly period" means a period of three calendar months  
327 commencing on the first day of January, April, July or October and  
328 ending on the last day of March, June, September or December,  
329 respectively; (3) "gross earnings" means all consideration received  
330 from the first sale within this state of a petroleum product; (4)  
331 "petroleum products" means those products which contain or are  
332 made from petroleum or a petroleum derivative; (5) "first sale of  
333 petroleum products within this state" means the initial sale of a  
334 petroleum product delivered to a location in this state; (6) "export" or  
335 "exportation" means the conveyance of petroleum products from  
336 within this state to a location outside this state for the purpose of sale  
337 or use outside this state; and (7) "sale for exportation" means a sale of  
338 petroleum products to a purchaser which itself exports such products.

339 (b) (1) Except as otherwise provided in subdivision (2) of this  
340 subsection, any company which is engaged in the refining or  
341 distribution, or both, of petroleum products and which distributes  
342 such products in this state shall pay a quarterly tax on its gross  
343 earnings derived from the first sale of petroleum products within this  
344 state. Each company shall on or before the last day of the month next  
345 succeeding each quarterly period render to the commissioner a return  
346 on forms prescribed or furnished by the commissioner and signed by  
347 the person performing the duties of treasurer or an authorized agent or  
348 officer, including the amount of gross earnings derived from the first

349 sale of petroleum products within this state for the quarterly period  
350 and such other facts as the commissioner may require for the purpose  
351 of making any computation required by this chapter. Except as  
352 otherwise provided in subdivision (3) of this subsection, the rate of tax  
353 shall be (A) five per cent with respect to calendar quarters prior to July  
354 1, 2005; (B) five and eight-tenths per cent with respect to calendar  
355 quarters commencing on or after July 1, 2005, and prior to July 1, 2006;  
356 (C) six and three-tenths per cent with respect to calendar quarters  
357 commencing on or after July 1, 2006, and prior to July 1, 2007; (D)  
358 seven per cent with respect to calendar quarters commencing on or  
359 after July 1, 2007, and prior to July 1, 2008; (E) seven and one-half per  
360 cent with respect to calendar quarters commencing on or after July 1,  
361 2008, and prior to July 1, 2013; and (F) eight and one-tenth per cent  
362 with respect to calendar quarters commencing on or after July 1, 2013.

363 (2) Gross earnings derived from the first sale of the following  
364 petroleum products within this state shall be exempt from tax: (A) Any  
365 petroleum products sold for exportation from this state for sale or use  
366 outside this state; (B) the product designated by the American Society  
367 for Testing and Materials as "Specification for Heating Oil D396-69",  
368 commonly known as number 2 heating oil, to be used exclusively for  
369 heating purposes or to be used in a commercial fishing vessel, which  
370 vessel qualifies for an exemption pursuant to section 12-412, as  
371 amended; (C) kerosene, commonly known as number 1 oil, to be used  
372 exclusively for heating purposes, provided delivery is of both number  
373 1 and number 2 oil, and via a truck with a metered delivery ticket to a  
374 residential dwelling or to a centrally metered system serving a group  
375 of residential dwellings; (D) the product identified as propane gas, to  
376 be used exclusively for heating purposes; (E) bunker fuel oil,  
377 intermediate fuel, marine diesel oil and marine gas oil to be used in  
378 any vessel having a displacement exceeding four thousand dead  
379 weight tons; (F) for any first sale occurring prior to July 1, 2008,  
380 propane gas to be used as a fuel for a motor vehicle; (G) for any first  
381 sale occurring on or after July 1, 2002, grade number 6 fuel oil, as  
382 defined in regulations adopted pursuant to section 16a-22c, to be used  
383 exclusively by a company which, in accordance with census data



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384 contained in the Standard Industrial Classification Manual, United  
 385 States Office of Management and Budget, 1987 edition, is included in  
 386 code classifications 2000 to 3999, inclusive, or in Sector 31, 32 or 33 in  
 387 the North American Industrial Classification System United States  
 388 Manual, United States Office of Management and Budget, 1997 edition;  
 389 (H) for any first sale occurring on or after July 1, 2002, number 2  
 390 heating oil to be used exclusively in a vessel primarily engaged in  
 391 interstate commerce, which vessel qualifies for an exemption under  
 392 section 12-412, as amended; (I) for any first sale occurring on or after  
 393 July 1, 2000, paraffin or microcrystalline waxes; or (J) for any first sale  
 394 occurring prior to July 1, 2008, petroleum products to be used as a fuel  
 395 for a fuel cell, as defined in subdivision (113) of section 12-412, as  
 396 amended.

397 (3) The rate of tax on gross earnings derived from the first sale of  
 398 grade number 6 fuel oil, as defined in regulations adopted pursuant to  
 399 section 16a-22c, to be used exclusively by a company which, in  
 400 accordance with census data contained in the Standard Industrial  
 401 Classification Manual, United States Office of Management and  
 402 Budget, 1987 edition, is included in code classifications 2000 to 3999,  
 403 inclusive, or in Sector 31, 32 or 33 in the North American Industrial  
 404 Classification System United States Manual, United States Office of  
 405 Management and Budget, 1997 edition, or number 2 heating oil used  
 406 exclusively in a vessel primarily engaged in interstate commerce,  
 407 which vessel qualifies for an exemption under section 12-412, as  
 408 amended, shall be: (A) Four per cent with respect to calendar quarters  
 409 commencing on or after July 1, 1998, and prior to July 1, 1999; (B) three  
 410 per cent with respect to calendar quarters commencing on or after July  
 411 1, 1999, and prior to July 1, 2000; (C) two per cent with respect to  
 412 calendar quarters commencing on or after July 1, 2000, and prior to  
 413 July 1, 2001; and (D) one per cent with respect to calendar quarters  
 414 commencing on or after July 1, 2001, and prior to July 1, 2002.

415 (c) (1) Any company which imports or causes to be imported into  
 416 this state petroleum products for sale, use or consumption in this state,  
 417 other than a company subject to and having paid the tax on such

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418 company's gross earnings from first sales of petroleum products  
419 within this state, which earnings include gross earnings attributable to  
420 such imported or caused to be imported petroleum products, in  
421 accordance with subsection (b) of this section, shall pay a quarterly tax  
422 on the consideration given or contracted to be given for such  
423 petroleum product if the consideration given or contracted to be given  
424 for all such deliveries during the quarterly period for which such tax is  
425 to be paid exceeds three thousand dollars. Except as otherwise  
426 provided in subdivision (3) of this subsection, the rate of tax shall be  
427 (A) five per cent with respect to calendar quarters commencing prior to  
428 July 1, 2005; (B) five and eight-tenths per cent with respect to calendar  
429 quarters commencing on or after July 1, 2005, and prior to July 1, 2006;  
430 (C) six and three-tenths per cent with respect to calendar quarters  
431 commencing on or after July 1, 2006, and prior to July 1, 2007; (D)  
432 seven per cent with respect to calendar quarters commencing on or  
433 after July 1, 2007, and prior to July 1, 2008; (E) seven and one-half per  
434 cent with respect to calendar quarters commencing on or after July 1,  
435 2008, and prior to July 1, 2013; and (F) eight and one-tenth per cent  
436 with respect to calendar quarters commencing on or after July 1, 2013.  
437 Fuel in the fuel supply tanks of a motor vehicle, which fuel tanks are  
438 directly connected to the engine, shall not be considered a delivery for  
439 the purposes of this subsection.

440 (2) Consideration given or contracted to be given for petroleum  
441 products, gross earnings from the first sale of which are exempt from  
442 tax under subdivision (2) of subsection (b) of this section, shall be  
443 exempt from tax.

444 (3) The rate of tax on consideration given or contracted to be given  
445 for grade number 6 fuel oil, as defined in regulations adopted  
446 pursuant to section 16a-22c, to be used exclusively by a company  
447 which, in accordance with census data contained in the Standard  
448 Industrial Classification Manual, United States Office of Management  
449 and Budget, 1987 edition, is included in code classifications 2000 to  
450 3999, inclusive, or in Sector 31, 32 or 33 in the North American  
451 Industrial Classification System United States Manual, United States

452 Office of Management and Budget, 1997 edition, or number 2 heating  
 453 oil used exclusively in a vessel primarily engaged in interstate  
 454 commerce, which vessel qualifies for an exemption under section 12-  
 455 412, as amended, shall be: (A) Four per cent with respect to calendar  
 456 quarters commencing on or after July 1, 1998, and prior to July 1, 1999;  
 457 (B) three per cent with respect to calendar quarters commencing on or  
 458 after July 1, 1999, and prior to July 1, 2000; (C) two per cent with  
 459 respect to calendar quarters commencing on or after July 1, 2000, and  
 460 prior to July 1, 2001; and (D) one per cent with respect to calendar  
 461 quarters commencing on or after July 1, 2001, and prior to July 1, 2002.

462 (d) The amount of tax reported to be due on such return shall be  
 463 due and payable on or before the last day of the month next  
 464 succeeding the quarterly period. The tax imposed under the provisions  
 465 of this chapter shall be in addition to any other tax imposed by this  
 466 state on such company. The Commissioner of Revenue Services shall  
 467 provide the company submitting the tax with a credit on the amount of  
 468 tax due in accordance with the estimates determined pursuant to  
 469 subsection (f) of this section, which the company shall deposit into the  
 470 underground storage tank petroleum clean-up account, established  
 471 pursuant to section 22a-449f, as amended by this act.

472 (e) For the purposes of this chapter, the gross earnings of any  
 473 producer or refiner of petroleum products operating a service station  
 474 along the highways or interstate highways within the state pursuant to  
 475 a contract with the Department of Transportation or operating a  
 476 service station which is used as a training or test marketing center  
 477 under the provisions of subsection (b) of section 14-344d, shall be  
 478 calculated by multiplying the volume of petroleum products delivered  
 479 by any producer or refiner to any such station by such producer's or  
 480 refiner's dealer tank wagon price or dealer wholesale price in the area  
 481 of the service station.

482 (f) Not later than thirty days after every quarterly period, the  
 483 Commissioner of Revenue Services shall conduct a review to estimate  
 484 the percentage of the revenues collected pursuant to this section

485 during such quarter that are necessary to fund the underground  
486 storage tank petroleum clean-up account in the amount of eighteen  
487 million dollars for the fiscal year ending June 30, 2007, and six million  
488 dollars annually thereafter, provided the amount in the account is not  
489 in excess of eighteen million dollars.

490 Sec. 5. Section 22a-449e of the 2006 supplement to the general  
491 statutes is repealed and the following is substituted in lieu thereof  
492 (*Effective October 1, 2006, and applicable to applications filed with the*  
493 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
494 *2006*):

495 (a) The [Commissioner of Environmental Protection, after  
496 consultation with the members of the board established by section 22a-  
497 449d,] Underground Storage Tank Petroleum Clean-Up Board shall  
498 adopt regulations in accordance with the provisions of chapter 54  
499 setting forth procedures for reimbursement and payment from the  
500 account established under section 22a-449c, as amended by this act.  
501 Such regulations shall include such provisions as the [commissioner]  
502 board deems necessary to carry out the purposes of sections 22a-449a  
503 to 22a-449h, inclusive, as amended by this act, including, but not  
504 limited to, provisions for (1) notification of eligible parties of the  
505 existence of the account; (2) records required for submission of claims  
506 and reimbursement and payment; (3) periodic and partial  
507 reimbursement and payment to enable responsible parties to meet  
508 interim costs, expenses and obligations; and (4) reimbursement and  
509 payment for costs, expenses and obligations incurred in connection  
510 with releases or suspected releases, and incurred after July 5, 1989, for  
511 releases discovered before or after said date provided reimbursement  
512 and payment shall not be made for costs, expenses and obligations  
513 incurred by a responsible party on or before said date.

514 (b) (1) The [commissioner] board, in accordance with the procedures  
515 set forth in subdivision (2) of this subsection, may prescribe a schedule  
516 for the maximum or range of amounts to be paid from the account for  
517 labor, equipment, materials, services or other costs, expenses or

518 obligations paid or incurred as a result of a release or suspected  
 519 release. Such schedule shall not be a regulation, as defined in section 4-  
 520 166 and the adoption, modification, repeal or use of such schedule  
 521 shall not be subject to the provisions of chapter 54 concerning a  
 522 regulation. The amounts in any such schedule [may be less than and]  
 523 shall [be] not be more than the usual, customary and reasonable  
 524 amounts charged, as determined by the [commissioner] board.  
 525 Notwithstanding the provisions of sections 22a-449a to 22a-449j,  
 526 inclusive, as amended by this act, or any regulation adopted by the  
 527 [commissioner] board pursuant to this section, upon adoption of any  
 528 such schedule, the amount to be paid from the account for any labor,  
 529 equipment, materials, services or other costs, expenses or other  
 530 obligations, shall not exceed the amount established in any such  
 531 schedule and such schedule. [may serve as guidance with respect to  
 532 any costs, expenses or other obligations paid or incurred before the  
 533 adoption of such schedule.]

534 (2) The [commissioner] board shall adopt, revise or revoke said  
 535 schedule in accordance with the provisions of this subsection. [After  
 536 consultation with the board, the commissioner] The board shall  
 537 publish notice of intent to adopt, revise or revoke the schedule, or any  
 538 portion thereof, in a newspaper having substantial circulation in the  
 539 affected area. There shall be a comment period of thirty days following  
 540 publication of such notice during which interested persons may  
 541 submit written comments to the [commissioner] board. The  
 542 [commissioner] board shall publish notice of the adoption, revision or  
 543 revocation of the schedule, or part thereof, in a newspaper having  
 544 substantial circulation in the affected area. The [commissioner] board  
 545 shall, [upon request,] review and shall make any revisions the  
 546 [commissioner] board deems necessary to such schedule not [more]  
 547 less than once every two years or may do so more frequently as the  
 548 [commissioner] board deems necessary, or upon written request by  
 549 any person. The [commissioner, after consultation with the board,]  
 550 board may revise or revoke the schedule, in whole or in part, using the  
 551 procedures specified in this subsection. Any person may request, in  
 552 writing, that the [commissioner] board adopt, revise or revoke the

553 schedule in accordance with this subsection.

554 (c) Upon adoption of a schedule by the [commissioner] board  
555 pursuant to subsection (b) of this section, the requirements concerning  
556 obtaining three bids for services rendered contained in regulations  
557 adopted pursuant to this section shall not apply, provided that the  
558 schedule includes the subject services.

559 (d) An environmental professional, who has a currently valid and  
560 effective license issued pursuant to section 22a-133v, shall use a seal, as  
561 provided for in regulations adopted pursuant to section 22a-133v, to  
562 provide written approval required under sections 22a-449c, as  
563 amended by this act, 22a-449f, as amended by this act, and 22a-449p,  
564 and any approval without a seal shall not constitute an approval of a  
565 licensed environmental professional. The regulations adopted  
566 pursuant to section 22a-133v regarding the use of a seal and the rules  
567 of professional conduct shall apply to the duties of a licensed  
568 environmental professional contained in sections 22a-449a to 22a-449i,  
569 inclusive, as amended by this act, and 22a-449p.

570 Sec. 6. Section 22a-449f of the 2006 supplement to the general  
571 statutes is repealed and the following is substituted in lieu thereof  
572 (*Effective October 1, 2006, and applicable to applications filed with the*  
573 *Underground Storage Tank Clean-Up Review Board on or after October 1,*  
574 *2006*):

575 (a) A responsible party may apply to the Underground Storage  
576 Tank Petroleum Clean-Up Account Review Board established under  
577 section 22a-449d, as amended by this act, for reimbursement for costs  
578 paid and payment of costs incurred as a result of a release, or a  
579 suspected release, including costs of investigating and remediating a  
580 release, or a suspected release, incurred or paid by such party. [who is  
581 determined not to have been liable for any such release.] If a person  
582 other than a responsible party, claims to have suffered bodily injury,  
583 property damage or damage to natural resources from a release, the  
584 person with such claim shall make reasonable attempts to provide  
585 written notice to the responsible party of such claim and if such person

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586 cannot provide such notice or if the responsible party does not apply  
587 to the board for payment of such claim not later than sixty days after  
588 receipt of such notice or such other time as may be agreed to by the  
589 parties, the person holding such claim may apply to the board for  
590 payment for such damage or bodily injury.

591 (b) (1) In addition to all other applicable requirements, a person  
592 seeking payment or reimbursement from the account shall  
593 demonstrate that when the total costs, expenses or other obligations in  
594 response to a release or suspected release (A) are two hundred fifty  
595 thousand dollars or less, that all labor, equipment and materials  
596 provided after October 1, 2005, and all services and activities  
597 undertaken after October 1, 2005, shall be approved, in writing, either  
598 by the [commissioner] Commissioner of Environmental Protection or  
599 by a licensed environmental professional with a currently valid and  
600 effective license issued pursuant to section 22a-133v; and (B) exceeds  
601 two hundred fifty thousand dollars, that all labor, equipment and  
602 materials provided after October 1, 2005, and all services and activities  
603 undertaken after October 1, 2005, shall be approved, in writing, by the  
604 [commissioner] Commissioner of Environmental Protection or that the  
605 commissioner has authorized, in writing, an environmental  
606 professional with a currently valid and effective license issued  
607 pursuant to section 22a-133v to approve, in writing, such labor,  
608 equipment, materials, services and activities, in lieu of a written  
609 approval by the commissioner. If the commissioner receives a written  
610 request for such authorization of an environmental professional with  
611 respect to a particular release or suspected release and does not  
612 approve or deny such request prior to thirty days after receipt, the  
613 request of the environmental professional shall be deemed to be  
614 authorized. If the commissioner denies a request for such  
615 authorization, the commissioner shall approve or disapprove such  
616 labor, equipment, materials, services and activities not later than thirty  
617 days after such denial. If the commissioner disapproves any such  
618 labor, equipment, materials, services or activities, the commissioner  
619 shall specify the labor, equipment, materials, services or activities  
620 disapproved, and shall provide a written statement of the reasons for

621 such disapproval. The provisions of this subsection shall apply to all  
622 costs, expenses or other obligations for which a person is seeking  
623 payment or reimbursement from the account and the board shall not  
624 order [and the commissioner shall not] or make payment or  
625 reimbursement from the account for any cost, expense or other  
626 obligation, unless the person seeking such payment or reimbursement  
627 includes with an application or with a request for payment or  
628 reimbursement all written approvals required by this subdivision.

629 (2) The fees charged by a licensed environmental professional  
630 regarding labor or services rendered in response to a release or  
631 suspected release may be included in any application or request for  
632 payment or reimbursement submitted to the board. The amount to be  
633 paid or reimbursed from the account for such fees may also be  
634 established in the schedule adopted by the [commissioner] board  
635 pursuant to subsection (b) of section 22a-449e, as amended by this act.

636 (3) Providing it is true and accurate, a licensed environmental  
637 professional shall submit the following certification regarding any  
638 approval provided under subdivision (1) of this subsection and section  
639 22a-449p: "I hereby agree that all of the labor, equipment, materials,  
640 services, and activities described in or covered by this certification was  
641 appropriate under the circumstances to abate an emergency or was  
642 performed as part of a plan specifically designed to ensure that the  
643 release or suspected release is or has been investigated in accordance  
644 with prevailing standards and guidelines and remediated consistent  
645 with and to achieve compliance with the remediation standards  
646 adopted under section 22a-133k of the general statutes."

647 (c) The board shall order reimbursement or payment from the  
648 account to a responsible party applicant for any cost paid or incurred,  
649 as the case may be, if, (1) such cost is or was incurred after July 5, 1989,  
650 (2) a responsible party was or would have been required to  
651 demonstrate financial responsibility under 40 CFR Part 280.90 et seq.  
652 as said regulation was published in the Federal Register of October 26,  
653 1988, for the underground storage tank or underground storage tank



654 system from which the release emanated, whether or not such party is  
655 required to comply with said requirements on the date any such cost is  
656 incurred, provided if the state is the responsible party, the board may  
657 order payment from the account without regard to whether the state  
658 was or would have been required to demonstrate financial  
659 responsibility under said sections 40 CFR Part 280.90 et seq., (3) after  
660 the release, if any, the responsible party incurred a cost, expense or  
661 obligation for investigation, cleanup or for claims of a person other  
662 than a responsible party resulting from the release, or suspected  
663 release provided any such claim shall be required to be finally  
664 adjudicated or settled with the prior written approval of the board  
665 before an application for reimbursement or payment is made, (4) the  
666 board determines that [the cost, expense or other obligation is  
667 reasonable and that] there are not grounds for recovery specified in  
668 subdivision (1) or (3) of subsection (g) of this section, (5) the  
669 responsible party notified the commissioner of the release in  
670 accordance with regulations adopted pursuant to section 22a-449, as  
671 amended, or, where such regulations are not applicable, as soon as  
672 practicable, and notified the board, as soon as practicable, of any claim  
673 by a person other than a responsible party, resulting from the release,  
674 (6) the responsible party, or, if a person other than a responsible party  
675 applies for payment or reimbursement from the account, then such  
676 person demonstrates the remediation, including any monitoring to  
677 determine the effectiveness of the remediation, for which payment or  
678 reimbursement is sought is not more stringent than that required by  
679 the remediation standards established pursuant to section 22a-133k,  
680 except to the extent the responsible party or such person demonstrates  
681 that it has been directed otherwise, in writing, by the commissioner, (7)  
682 [the responsible party, or, if a person other than a responsible party  
683 applies for payment or reimbursement from the account, then such  
684 person demonstrates that it does not have insurance, or a contract or  
685 other agreement to provide payment or reimbursement for any cost,  
686 expense or other obligation incurred in response to a release or  
687 suspected release, or if there is any such insurance, contract or other  
688 agreement, that any insurance coverage has been denied or is

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689 insufficient to cover the costs, expenses or other obligations, paid or  
690 incurred or that any contract or other agreement is not able to or is  
691 insufficient to cover the costs, expenses or other obligations, paid or  
692 incurred, for which payment or reimbursement is sought from the  
693 account] the costs, expenses or obligations for which reimbursement or  
694 payment is sought are consistent with the schedule adopted by the  
695 board pursuant to section 22a-449e, as amended by this act, or, if such  
696 costs, expenses or obligations were incurred prior to the effective date  
697 of such schedule or are not addressed by such schedule, are  
698 reasonable, (8) the responsible party demonstrates and the board  
699 determines that one of the milestones noted in section 22a-449p has  
700 been completed, and that the application was received by the board  
701 not later than one year after the completion of all or substantially all of  
702 the work or activities necessary to prepare the plan or report required  
703 by the applicable milestone, (9) the board determines what, if any,  
704 reductions to the amounts sought from the account should be made  
705 based upon the compliance evaluations performed pursuant to  
706 subsection (d) of this section, and (10) if at the time [any] the initial  
707 application or request for payment or reimbursement [, including any  
708 supplemental application or request, is] with respect to a release or  
709 suspected release is submitted to the board, there [is] no longer are  
710 underground storage tank [system dispensing petroleum] systems on  
711 the property where the release or suspected release emanated or  
712 occurred, then the responsible party demonstrates, in addition to all  
713 other applicable requirements, that lack of compliance with provisions  
714 of the general statutes and regulations governing underground storage  
715 tank systems was not a proximate cause of the release or suspected  
716 release and that there are not grounds for recovery specified in  
717 subdivision (2) of subsection (g) of this section. In acting on an  
718 application or a request for payment or reimbursement, the board,  
719 using funds from the account, may contract with experts, including,  
720 but not limited to, attorneys and medical professionals, to better  
721 evaluate and defend against claims and negotiate claims by persons  
722 other than responsible parties. [The costs of the board for experts shall  
723 not be charged to the amount allocated to the Department of

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724 Environmental Protection pursuant to section 22a-449c.] If a person  
725 other than a responsible party applies to the board claiming to have  
726 suffered bodily injury, property damage or damage to natural  
727 resources, the board shall order reimbursement or payment from the  
728 account if such person demonstrates that subdivisions (1), (2), (6) and  
729 (7) of this subsection are satisfied, the board determines that as a result  
730 of a release or suspected release such person has suffered bodily  
731 injury, property damage or damage to natural resources, that the costs,  
732 expenses or other obligations incurred are reasonable and the person  
733 submitting such claim demonstrates that it has attempted to or has  
734 provided written notice of its claim to the responsible party as  
735 required in subsection (a) of this section and that the responsible party  
736 has not applied to the board for payment or reimbursement of this  
737 claim.

738 (d) (1) Except as provided in this subsection, if at the time [any] the  
739 initial application or request for payment or reimbursement is  
740 submitted by a responsible party to the board, [including any  
741 supplemental application or request, there is an] there are any  
742 underground storage tank [system dispensing petroleum] systems on  
743 the property where the release or suspected release emanated or  
744 occurred, such application or request shall not be deemed complete  
745 and shall not be acted upon by the board unless such application or  
746 request includes a summary of the compliance status of all the  
747 underground storage tank systems on the subject property. Any such  
748 summary shall include an evaluation of compliance with the design,  
749 construction, installation, notification, general operating, release  
750 detecting, system upgrading, abandonment and removal date  
751 requirements of the regulations adopted pursuant to [sections] section  
752 22a-449, as amended, and with the requirements of section 22a-449o  
753 and shall be prepared by an independent consultant on a form  
754 [prescribed by or acceptable to the commissioner] developed by the  
755 board, in consultation with the commissioner. The summary shall be  
756 based on an evaluation of said underground storage tank systems  
757 performed not more than one hundred eighty days before the board  
758 receives an application or a request for reimbursement or payment,

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759 except that with respect to any provision of the subject regulations  
760 regarding record keeping, periodic monitoring or testing, the summary  
761 shall be based on an evaluation of a one-year period terminating  
762 within one hundred eighty days prior to the board's receipt of an  
763 application or a request for payment or reimbursement. The summary  
764 shall also include a full description of all corrective measures that have  
765 been taken or that are being taken with regard to any noncompliance  
766 identified in the compliance evaluation performed pursuant to this  
767 subdivision.

768 (2) [With respect to any initial application or request for payment or  
769 reimbursement regarding a release or suspected release the] The  
770 provisions of subdivision (1) of this subsection shall apply [only] to  
771 initial applications or requests received on or after January 1, 2006.  
772 With respect to any supplemental application or request for payment  
773 or reimbursement regarding a release or suspected release, for which  
774 an initial application was submitted on or after January 1, 2006, the  
775 provisions of subdivision (1) of this subsection shall apply to each such  
776 supplemental application or request, [submitted to the board on or  
777 after January 1, 2006, regardless of when the initial application or  
778 request was submitted,] except that submission of a compliance  
779 summary shall not be required if at the time [a] such supplemental  
780 application or request is submitted, less than one year has passed since  
781 the performance of a compliance evaluation submitted with any prior  
782 application or request.

783 (3) The cost of hiring an independent consultant to perform a  
784 compliance evaluation, as required by this subsection, shall be eligible  
785 for payment or reimbursement from the account up to a maximum of  
786 one thousand dollars per compliance evaluation, provided the  
787 evaluation is in conformance with the requirements of this subsection  
788 and includes all underground storage tank systems on the property  
789 where a release or suspected release emanated or occurred. If the  
790 schedule adopted by the [commissioner] board pursuant to subsection  
791 (b) of section 22a-449e, as amended by this act, includes an amount for  
792 performing a compliance evaluation, upon adoption of any such

793 schedule, the amount eligible for payment or reimbursement for  
794 performing a compliance evaluation shall be the amount prescribed in  
795 any such schedule.

796 (4) Nothing in this subsection shall affect the continued applicability  
797 of any decision of the board to (A) deny reimbursement or payment  
798 from the account, or (B) provide only partial payment or  
799 reimbursement regarding all applications or requests for payment or  
800 reimbursement from the account. Any such decision shall remain in  
801 effect and shall not be subject to reconsideration or reevaluation as a  
802 result of this subsection.

803 [(5) Except as provided for in this subdivision, if at the time any  
804 application or request for payment or reimbursement, including any  
805 supplemental application or request, is submitted, there is no  
806 underground storage tank system dispensing petroleum on the  
807 property where the release or suspected release emanated or occurred,  
808 any such application or request shall be subject to the provisions of  
809 subdivision (10) of subsection (c) of this section, even where a prior  
810 application or request was subject to the provisions of this subsection.  
811 The provisions of this subdivision shall not apply to an application or  
812 request for payment or reimbursement for annual groundwater  
813 remedial actions, including the preparation of a groundwater remedial  
814 action progress report, performed pursuant to subdivision (6) of  
815 section 22a-449p.]

816 (e) (1) If the compliance evaluation summary performed pursuant to  
817 subsection (d) of this section indicates that any of the violations noted  
818 in this subdivision exist with respect to any underground storage tank  
819 or underground storage tank system on the property at which a release  
820 or suspected release occurred and any such violations have not been  
821 fully corrected by the time an application or request for reimbursement  
822 is submitted to the board, the board shall reduce any payment or  
823 amount to be reimbursed as follows: (A) A one hundred per cent  
824 reduction of the payment or amount to be reimbursed for failure to  
825 meet the tank or piping construction requirements of section 22a-449o

826 or the regulations adopted pursuant to section 22a-449, as amended, or  
827 for failure to report the release to the commissioner as required by this  
828 section, (B) a seventy-five per cent reduction of the payment or amount  
829 to be reimbursed for failure to have properly functioning cathodic  
830 protection, spill prevention, overfill prevention, or release detection as  
831 required by the regulations adopted pursuant to section 22a-449, as  
832 amended. Notwithstanding the provisions of this subsection, the board  
833 may reduce any amount to be paid or reimbursed based on any other  
834 violation of the provisions of the general statutes or regulations of  
835 Connecticut state agencies regarding ownership or operation of an  
836 underground storage tank system if such violation has not been fully  
837 corrected by the time an application or request for reimbursement is  
838 submitted to the board.

839 (2) Nothing in this subsection and no determination by the board of  
840 any issue of fact or law shall affect the authority of the commissioner  
841 under any other statute or regulations, including, but not limited to,  
842 taking any enforcement action based upon the violations identified in  
843 any compliance evaluation performed pursuant to subsection (d) of  
844 this section.

845 (f) (1) For all work or services performed or materials provided  
846 before October 1, 2004, the board shall not order payment or  
847 reimbursement from the account for any cost paid or incurred, unless  
848 when seeking payment or reimbursement, the application or any  
849 submission regarding work, services or materials that have been pre-  
850 authorized by the board is received by the board on or before April 1,  
851 2005.

852 (2) For purposes of this subsection, work or services shall be  
853 deemed rendered or performed on the date such work is rendered or  
854 performed and a material shall be deemed provided on the date a  
855 material is made available for use.

856 (3) After June 30, 2005, the board shall not order payment or  
857 reimbursement from the account for any cost, expense or other  
858 obligation, paid or incurred, unless the application or request for

859 payment or reimbursement is received by the board not later than one  
860 year after the completion of all or substantially all of the work or  
861 activities necessary to prepare the plan or report required by the  
862 milestones set forth in section 22a-449p.

863 (g) The Attorney General, upon the request of the board, [for the  
864 commissioner,] may institute an action in the superior court for the  
865 judicial district of Hartford to recover the amounts specified in this  
866 section from any person who owns or operates an underground  
867 storage tank system at the time a release emanates or occurs from such  
868 system or any person who owns the real property on which a release  
869 emanates or occurs, provided such person owned the real property at  
870 or any time after the release emanates or occurs until the time that a  
871 final remediation action report is submitted by a licensed  
872 environmental professional or approved by the commissioner  
873 pursuant to subdivision (7) of section 22a-449p, if: (1) Prior to the  
874 occurrence of the release, the underground storage tank or  
875 underground storage tank system from which the release emanated  
876 was required by regulations adopted under section 22a-449, as  
877 amended by this act, to submit a notification to the commissioner but  
878 [no such notification was provided] the responsible party knowingly  
879 and intentionally failed to notify the commissioner; (2) the release  
880 results from a reckless, wilful, wanton or intentional act or omission of  
881 [such person or a negligent act or omission of such person that  
882 constitutes noncompliance with the general statutes or regulations  
883 governing the installation, operation and maintenance of underground  
884 storage tanks] a responsible party; or (3) the release occurs from an  
885 underground storage tank or system which is not in compliance with a  
886 final order issued by the commissioner pursuant to this chapter or a  
887 final judgment issued by a court concerning noncompliance with a  
888 requirement of this chapter and such lack of compliance with the final  
889 order or final judgment was a proximate cause of such release; or (4)  
890 payment has been made from the account [, including payment to the  
891 commissioner pursuant to subsection (i) of this section,] to a person  
892 other than a person against whom an action may be brought pursuant  
893 to this subsection. All costs to the state relating to actions to recover

894 such payments, including, but not limited to, reasonable attorneys'  
895 fees, shall initially be paid from the underground storage tank  
896 petroleum clean-up account. In any recovery the board [or the  
897 commissioner] is entitled to recover from such person (A) all payments  
898 made from the account with respect to a release or suspected release,  
899 (B) [all payments made by the commissioner pursuant to subsection (i)  
900 of this section with respect to a release or suspected release, (C)]  
901 interest on such payments at a rate of ten per cent per year from the  
902 date such payments were made, and [(D)] (C) all costs of the state  
903 relating to actions to recover such payments, including, but not limited  
904 to, reasonable attorneys' fees. All actions brought pursuant to this  
905 section shall have precedence in the order of trial, as provided in  
906 section 52-191. If the Attorney General has filed an action against a  
907 person seeking recovery of the amounts specified in this subsection or  
908 if the commissioner sends a person a demand letter regarding costs  
909 incurred by the state pursuant to section 22a-451, any such person  
910 against whom an action has been brought or who receives a demand  
911 letter shall not submit an application or request for payment or  
912 reimbursement to the board seeking payment or reimbursement of any  
913 such amount sought by the Attorney General or by the commissioner.  
914 If any such application or request for payment or reimbursement is  
915 submitted, the board shall not take any action regarding any such  
916 application or request.

917 (h) The board shall render its decision not more than ninety days  
918 after receipt of an application from a person, provided, in the case of a  
919 second or subsequent application, the board shall render its decision  
920 not more than forty-five days after receipt of such application. A copy  
921 of the decision shall be sent to [the commissioner and] the person  
922 seeking payment or reimbursement by certified mail, return receipt  
923 requested. The [commissioner or any person aggrieved by the decision  
924 of the board] person seeking payment or reimbursement may, within  
925 twenty days from the date of issuance of such decision, request a  
926 hearing before the board in accordance with the provisions of chapter  
927 54. After such hearing, the board shall consider the information  
928 submitted to it and affirm or modify its decision on the application. A



929 copy of the affirmed or modified decision shall be sent to [all parties to  
 930 the hearing] the person seeking payment or reimbursement by  
 931 certified mail, return receipt requested. Once the board renders a  
 932 decision regarding an application or request for payment or  
 933 reimbursement and no hearing has been requested pursuant to this  
 934 subsection regarding any such decision, the costs, expenses or other  
 935 obligations addressed by any such decision shall not be resubmitted in  
 936 any other application or request.

937 (i) Whenever the commissioner determines that as a result of a  
 938 release, as defined in section 22a-449a, as amended by this act, or a  
 939 suspected release, a clean-up is necessary, including, but not limited to,  
 940 actions to prevent or abate pollution or a potential source of pollution  
 941 and to provide potable drinking water [,] and the commissioner [may  
 942 undertake such actions using not more than one million dollars from  
 943 the underground storage tank petroleum clean-up account for each  
 944 release or suspected release from an underground storage tank or an  
 945 underground storage tank system for which the responsible party is  
 946 the state or for which a responsible party was or would have been  
 947 required to demonstrate financial responsibility under 40 CFR Part  
 948 280.90 et seq., as said regulation was published in the Federal Register  
 949 of October 26, 1988] undertakes such a clean-up, the commissioner  
 950 may apply for reimbursement or payment from the account pursuant  
 951 to this section.

952 (j) (1) If, [through] with respect to a release or suspected release for  
 953 which an initial application or request for payment or reimbursement  
 954 was received by the board before June 1, 2005, the board has  
 955 determined that a person has paid or incurred costs, expenses or other  
 956 obligations that are eligible for payment or reimbursement from the  
 957 account, the following shall apply with respect to any supplemental  
 958 application or request for payment or reimbursement. [the following  
 959 shall apply.] The [commissioner] board may identify a category of  
 960 activities, costs, expenses, or other obligations that are less than one  
 961 hundred thousand dollars for which, in lieu of full payment, the board  
 962 may approve a percentage of the costs, expenses or other obligations

963 paid or incurred. In [making any such recommendation to the board,  
964 the commissioner] identifying such categories and approving such  
965 percentages, the board shall consider the amounts previously paid  
966 from the account and any other information the [commissioner] board  
967 deems relevant. Any such percentage shall be not more than, but may  
968 be less than, ninety per cent of the average amount, as determined by  
969 the [commissioner] board, previously paid from the account for any  
970 activity, cost, expense or obligation. [The board shall approve or  
971 disapprove, but shall not modify, payment of the percentage  
972 recommended by the commissioner pursuant to this subdivision.] The  
973 [commissioner] board may, using the procedures specified in this  
974 subdivision, [recommend] make changes to any percentage previously  
975 approved by the board under this subdivision.

976 (2) If the board approves payment of the percentage, [recommended  
977 by the commissioner,] a person with a supplemental application or  
978 request for payment or reimbursement may agree to accept the  
979 percentage payment approved by the board. Any such acceptance  
980 shall be in writing, signed by the person seeking payment or  
981 reimbursement and shall acknowledge that the person is agreeing to  
982 accept less than the full amount sought by such person for the costs,  
983 expenses or other obligations covered by such acceptance. [If the  
984 commissioner has prescribed forms, any such acceptance shall be  
985 made using the forms prescribed by the commissioner.] The board  
986 may prescribe a form to be used for any such acceptance. Once a  
987 completed written acceptance is received, the board shall, not later  
988 than ninety days after receiving such acceptance, determine whether to  
989 order payment or reimbursement from the account. Any such  
990 determination by the board shall be limited to whether the costs,  
991 expenses or other obligations are within those for which the board has  
992 approved payment pursuant to subdivision (1) of this subsection.

993 (3) Any amount ordered to be paid or reimbursed by the board shall  
994 be considered full payment for any such activity, expense or other  
995 obligation and a person shall not seek any additional reimbursement  
996 from the account for any such activity, expense or other obligation. The

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997 categories or activities for which the [commissioner recommends]  
998 board approves payment of a percentage pursuant to this subsection  
999 may constitute all or a portion of the amounts sought in a  
1000 supplemental application or supplemental request for payment or  
1001 reimbursement.

1002 (k) Notification to the commissioner pursuant to regulations  
1003 adopted pursuant to section 22a-449, as amended by this act, shall  
1004 constitute compliance with any regulation adopted pursuant to section  
1005 22a-449e, as amended by this act, regarding notification to the board of  
1006 a release. The commissioner shall promptly notify the board of any  
1007 notification of a release received by the commissioner.

1008 Sec. 7. Section 22a-449g of the general statutes is repealed and the  
1009 following is substituted in lieu thereof (*Effective October 1, 2006, and*  
1010 *applicable to applications filed with the Underground Storage Tank Clean-Up*  
1011 *Review Board on or after October 1, 2006):*

1012 The [Commissioner of Environmental Protection or any] person  
1013 [aggrieved by a decision of the review board established under section  
1014 22a-449d] seeking payment or reimbursement may appeal from such  
1015 decision by the board following a hearing pursuant to section 22a-449f,  
1016 as amended by this act, to the superior court for the judicial district of  
1017 New Britain within twenty days after the issuance of such decision.  
1018 Such appeal shall be in accordance with chapter 54. All such appeals  
1019 shall be heard by the court without a jury, and shall have precedence  
1020 in the order of trial as provided in section 52-192. If the [review] board  
1021 orders reimbursement or payment from the account [,] for a portion of  
1022 the amount sought, but denies reimbursement or payment for the  
1023 remainder, and the person seeking payment or reimbursement and a  
1024 party to the appeal contests [any portion of the ordered reimbursement  
1025 or payment] such denial, the uncontested portion of the ordered  
1026 reimbursement or payment shall be made, notwithstanding the  
1027 pendency of the appeal.

1028 Sec. 8. (*Effective October 1, 2006*) (a) Not later than October 1, 2006,  
1029 the Underground Storage Tank, Petroleum, Clean-Up Account Review

1030 Board shall retain an expert to determine the exact nature and scope of  
1031 the backlog of applications filed under section 22a-449f of the 2006  
1032 supplement to the general statutes, as amended by this act. The board  
1033 may use not more than two hundred fifty thousand dollars of the  
1034 funds allocated for administrative costs pursuant to section 22a-449c of  
1035 the 2006 supplement to the general statutes, as amended by this act, to  
1036 pay for said expert. Once having determined the amount necessary to  
1037 extinguish the claims held in excess of the statutory time requirements  
1038 for payment of claims, as provided in said section 22a-449f, the board  
1039 shall order payments from the underground storage tank petroleum  
1040 clean-up account to extinguish all existing claims held longer than  
1041 ninety days of said time requirements. The board shall make payments  
1042 as are necessary pursuant to this subsection not later than one hundred  
1043 eighty days after the order.

1044 (b) Not later than October 1, 2006, the board shall retain an expert to  
1045 determine whether it is feasible for the board to provide owners and  
1046 operators of underground storage tank systems with evidence of  
1047 financial responsibility required by federal law by utilizing  
1048 reinsurance for coverage amounts in excess of two hundred fifty  
1049 thousand dollars and up to and including two million dollars. The  
1050 board may use not more than two hundred fifty thousand dollars of  
1051 the funds allocated for administrative costs pursuant to section 22a-  
1052 449c of the 2006 supplement to the general statutes, as amended by this  
1053 act, to pay for said expert. Not later than February 1, 2007, the board  
1054 shall report to the joint standing committee of the General Assembly  
1055 having cognizance of matters relating to the environment, in  
1056 accordance with the provisions of section 11-4a of the general statutes,  
1057 concerning the result of its analysis.

1058 Sec. 9. (*Effective October 1, 2006*) Sections 22a-449, 22a-449a, 22a-449c,  
1059 22a-449d, 22a-449e, 22a-449f, and 22a-449p of the 2006 supplement to  
1060 the general statutes, as amended by this act, shall, except where  
1061 otherwise stated in the text of said sections, be applicable to  
1062 applications to the underground storage tank petroleum clean-up  
1063 account that were filed on or after June 30, 2005, and before October 1,

1064 2006.

1065 Sec. 10. Section 22a-449b of the general statutes is repealed. (*Effective*  
 1066 *October 1, 2006*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449a
Sec. 2	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449c
Sec. 3	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449d
Sec. 4	<i>October 1, 2006</i>	12-587
Sec. 5	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449e
Sec. 6	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449f

Sec. 7	<i>October 1, 2006, and applicable to applications filed with the Underground Storage Tank Clean-Up Review Board on or after October 1, 2006</i>	22a-449g
Sec. 8	<i>October 1, 2006</i>	New section
Sec. 9	<i>October 1, 2006</i>	New section
Sec. 10	<i>October 1, 2006</i>	Repealer section

**ENV**      *Joint Favorable*

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The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Department of Environmental Protection	GF / EQ Fund-(UST account)-Cost	Significant Impact	Significant Impact
Attorney General	GF - Revenue Loss	Potential	Potential
Department of Revenue Services	GF - Revenue Loss	18 million	6 Million

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill appears to result in a General Fund revenue loss of \$18 million in FY 07 and \$6 million in FY 08 and each year thereafter as a result of credits provided to companies subject to the Petroleum Gross Earnings Tax for deposits into the Underground Storage Tank Petroleum Clean-Up Account (UST account).

The bill makes various changes to the UST account which is anticipated to increase costs to the state. The UST account is currently funded through a \$12 million dollar per year earmarking of the petroleum products gross earnings tax. It is an account within the Department of Environmental Protection's (DEP) Environmental Quality Fund. The bill removes the account from the Environmental Quality Fund and places it under the UST board control. It is not clear what this means. The bill authorizes the board to use \$1,500,000 from the UST account annually for administrative purposes and eliminates the use of the account (\$2,000,000) for administrative costs by the DEP. These changes will result in the elimination of funding for 14 currently filled DEP positions and the associated agency resources. The bill also authorizes the UST board to charge DEP for the costs of experts it

retains. This provision could result in significant costs to the General Fund.

It is anticipated that the various changes to current law made in the bill including eliminating caps on payments, allowing responsible parties to be paid from the account regardless of whether they have insurance or other agreements to reimburse them, allowing applicants to be reimbursed regardless of whether they are liable for a leak, requiring the UST board to pay off all eligible claims held longer than the law allows, allowing an applicant that is liable for a release to apply for payment, and authorizing the UST board rather than the Commissioner of the DEP to make payments from the account as well as set procedures for reimbursement and establish payment schedules will increase the liability to the account and therefore the state. The exact impact is not known.

The bill could reduce state revenues from civil penalties imposed for certain environmental violations (the Office of the Attorney General typically generates over \$2 million annually in penalties for environmental violations overall).

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.



01067

**OLR Bill Analysis  
SB 465**

**AN ACT CONCERNING THE UNDERGROUND STORAGE TANK  
PETROLEUM CLEAN-UP ACCOUNT.**

**SUMMARY:**

The Underground Storage Tank Petroleum Clean-up Account (account) reimburses commercial underground storage tank (UST) owners and operators for costs they incur because of leaking USTs, including the costs of investigating and remediating the leaks. Payments from the account are ordered by the Underground Storage Tank Petroleum Clean-Up Account Review Board (board), and made by the Department of Environmental Protection (DEP) commissioner. The account is funded at \$12 million annually from the Petroleum Products Gross Earnings Tax.

This bill applies to applications filed on or after October 1, 2006. Therefore, some of the changes it makes to applications filed before that date have no effect (see COMMENT).

This bill makes a number of changes to the program regarding applications filed on or after October 1, 2006. It:

1. authorizes the board, rather than the commissioner, to make payments from the account, and requires it to pay off all eligible claims held longer than the law allows;
2. eliminates caps on payments made to people eligible for reimbursement ("responsible parties") for (a) attorneys' fees, (b) interest, and (c) loss of property value;
3. allows responsible parties to be paid from the account, regardless of whether they have insurance or other agreements

- to reimburse them, and allows them to apply for payment or reimbursement regardless of whether they are liable for the leak;
4. allows an applicant who is liable for the release to apply for payment or reimbursement.
  5. limits the attorney general's ability to recover damages from responsible parties;
  6. eliminates the DEP's ability to use money from the account for remediation without complying with the formal application process;
  7. increases funding for the account from \$12 million to \$18 million in FY 07;
  8. applies the bill's provisions retroactively to applications for payment made between June 30, 2005 and October 1, 2006, the act's effective date;
  9. changes the board's composition;
  10. and makes other changes

EFFECTIVE DATE: October 1, 2006, and applicable to applications filed with the board on or after October 1, 2006.

## **§ 1 RESPONSIBLE PARTIES**

The bill purports to delay by 15 months an expanded definition of who is considered a responsible party. But, this provision has no effect because it applies to applications already filed, while the bill applies to applications filed on and after October 1, 2006.

Under current law, for applications received after July 1, 2005, a "responsible party" is any person who, at any time (1) owns, leases, uses, operates, or has an interest in a UST from which a leak or suspected leak occurred or (2) owns, leases, uses, or has an interest in

property on which such a tank is located. These people are responsible parties whether or not they had such an interest in the tank or property when the leak occurred. By law, a responsible party also includes anyone related to anyone in the first two groups through a family, contractual, corporate, or financial relationship. The bill excludes from the definition ty someone who has a contractual relationship with a responsible party.

**§ 2 REPLACING THE COMMISSIONER WITH THE BOARD; ELIMINATING THE CAP ON ATTORNEYS FEES AND THE INSURANCE REQUIREMENT**

The bill removes the account from the Environmental Quality Fund and places it under the board's control. It is not clear where the account is located. The bill authorizes the board, rather than the commissioner, to (1) make payments from the account to pay responsible parties for costs, expenses, and other obligations incurred as the result of releases or suspected release and (2) pay assignees, if the party making the assignment directs the board to pay them using a form the board (rather than the commissioner) approves. It authorizes the board to use up to \$1.5 million from the account for administrative costs, apparently on an annual basis.

***Removing Caps on Attorney's Fees, Interest, and Other Costs***

The bill eliminates provisions prohibiting the commissioner, after June 1, 2005, from paying or reimbursing applicants for the costs of (1) loss of property value, (2) interest, or (3) attorney's fees or other costs of legal representation (a) of more than \$5,000 to a responsible party, (b) more than \$10,000 to anyone other than a responsible party, and (c) by a responsible party defending against another's claims.

***Elimination of Insurance Requirement***

It eliminates requirements that an applicant who has insurance, or another agreement to reimburse him for costs he incurred in response to a leak, must (1) notify the board of this payment or expected payment and (2) repay the account the money he receives from these

sources. It also eliminates a related provision allowing an insured applicant to be paid only if his insurance has been denied or is not sufficient to cover the costs for which the applicant is seeking payment.

### ***Elimination of Supplemental Application Deadlines***

By law, applicants submitting initial applications before July 1, 2005 cannot submit supplemental applications on or after October 1, 2009. Applicants submitting initial applications after July 1, 2005 cannot submit a supplemental application more than five years after the board received the initial application. The bill attempts to eliminate the deadlines for submitting supplemental applications. But, this provision has no effect on applications already filed because the bill applies to applications filed on and after October 1, 2006 (see COMMENT).

### ***Other Changes***

It eliminates (1) a “pay for performance” subaccount within the clean-up account, from which the commissioner may pay applicants who achieve certain environmental milestones or results, and (2) an annual allocation of \$2 million to the DEP for administrative costs.

## **§ 3—CHANGE IN BOARD SIZE AND MEMBERSHIP**

Under current law, the board has 14 members representing the state, the public, municipalities, business, environmental professionals, and various sectors of the oil industry. The bill reduces membership in the board to 12 by removing the Department of Revenue Services (DRS) commissioner and the state fire marshal. It replaces a member representing a manufacturing company employing fewer than 75 people with a representative of a Connecticut-based insurance company with expertise in environmental impairment insurance. The House speaker, who by law appoints the manufacturing company member, appoints the insurance representative.

The bill requires DEP to report to the board on releases related to applications for payment or reimbursement. It requires the board to report to the Environment Committee by January 1, 2007, and annually thereafter, about the UST program’s needs.

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**§ 4—PROGRAM FUNDING**

By law, the program receives \$12 million annually from the Petroleum Gross Earnings Tax. The bill instead requires the DRS commissioner, no later than 30 days after the end of each quarter, to estimate the percentage of revenues collected from this tax needed to provide the account with \$18 million for FY 07 and \$6 million annually thereafter, provided the account never exceeds \$18 million. It requires the DRS commissioner to give each company submitting the tax a credit for the amount of tax due the account according to his estimates. The company must deposit the amount into the account.

**§ 5—REGULATIONS AND PRICE SCHEDULE**

The bill requires the board, rather than the DEP commissioner, to adopt regulations setting forth procedures for reimbursement and payments, including provisions for (1) notice, (2) record, and (3) periodic and partial payments.

It requires the board, rather than the commissioner in consultation with the board, to adopt regulations establishing payment and reimbursement procedures.

It authorizes the board, rather than the commissioner, to prescribe a schedule for a maximum or range of amounts the account may pay for labor, equipment, materials, services, or other costs incurred because of a release or suspected release. The amounts in the schedule cannot be more than the usual, customary, and reasonable amounts for these costs, as determined by the board. Once it adopts the schedule, the board cannot pay more than the schedule allows, regardless of any regulation the board adopts. But, the bill eliminates a provision permitting the board to use the price schedule as guidance on these costs before it is adopted.

By law, the commissioner must review the price schedule when requested, and to revise it no more than once every two years, unless she believes more frequent revisions are necessary. The bill instead requires the board to review and revise the schedule (1) at least once

every two years, or more frequently if the board deems it necessary, or (2) upon anyone's written request. It authorizes the board, rather than the commissioner, to revise or revoke all or a portion of the schedule and allows anyone to request, in writing, that the board adopt, revise, or revoke it. The bill authorizes the board, rather than the commissioner, to comply with notice requirements for the price schedule, and makes other conforming changes.

## **§ 6—CHANGES IN LIABILITY, CONDITIONS FOR REIMBURSEMENT AND ACTIONS FOR DAMAGES**

Under current law, a responsible party who is not liable for a release or suspected release may apply to the board for payment or reimbursement for costs he incurred investigating or remediating the release. The bill allows an applicant who is liable for the release to apply for payment or reimbursement.

### ***Authorization of Licensed Environmental Professionals***

Current law requires that the DEP commissioner give prior written approval for the costs of labor, equipment, materials, services, and activities. The board cannot order payment of costs totaling \$250,000 or less unless the DEP commissioner or a licensed environmental professional (LEP) gives written approval. For such costs exceeding \$250,000 the commissioner must give written approval or authorize, in writing, an LEP to do so. Under the bill, the commissioner must approve or deny a written request that she authorize an LEP to give written approval within 30 days of receiving it. If she fails to meet that deadline, the LEP is deemed authorized to approve the costs. If the commissioner refuses to authorize an LEP, she must approve or disapprove the costs within 30 days of that denial. She must specify any costs denied and provide the reasons for her disapproval in writing.

### ***Conditions for Payment or Reimbursement***

By law, the board reimburses or pays responsible parties and others who suffered damage or personal injury because of a UST leak if they meet certain conditions. The bill appears to limit applicants to

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responsible parties, but the law, unchanged by the bill, authorizes applications for payment by people other than responsible parties.

The bill eliminates the need for an applicant to show that he is uninsured, or that his insurance coverage has been denied or is insufficient to cover his costs. It requires instead that the costs for which reimbursement are sought be consistent with the price schedule the board adopt. If the costs were incurred before the schedule's adoption, the bill requires that they be reasonable.

The law, unchanged by the bill, requires that a responsible party seeking payment show he has achieved one of several milestones. The bill also requires that the board receive his application for payment no later than one year after he completes all or substantially all of the work needed to prepare the plan or report the applicable milestone requires.

If there are no USTs dispensing oil when the applicant submits his initial or subsequent applications for payment, current law requires him to show, among other things, that his failure to comply with laws and regulations governing USTs was not a proximate cause of the leak, and that the leak was not caused by reckless, willful, wanton, or intentional conduct or negligence constituting noncompliance with UST laws or regulations. The bill instead requires that he show this only on his initial application, and applies these requirements to all UST systems that no longer exist on his property, rather than only those that dispensed oil.

The bill allows the board to charge DEP for the costs of experts the board retains to help it evaluate claims.

**Compliance Status**

Under current law, if there are USTs dispensing oil when an initial or supplemental application for payment is filed, the applicant must include with his application a summary of the compliance status of all USTs on his property. An independent consultant must prepare the summary on a form the commissioner prescribes or accepts. The bill

applies this requirement (1) only to initial applications by responsible parties and (2) to all UST systems, not just those that dispense oil. It also requires the board, rather than the DEP commissioner, to prepare the compliance report form, after consulting with the commissioner.

Under the bill, this provision applies to (1) initial applications received on or after January 1, 2006, and (2) supplemental applications, if the initial application was submitted on or after January 1, 2006. This provision has no effect on applications already filed, because the bill applies to applications filed on and after October 1, 2006 (see COMMENT).

Under current law, all supplemental applications must include a compliance report, regardless of when the initial application was submitted. Under the bill, and by law, no compliance summary need be submitted if it has been less than one year since one was submitted with a prior application.

By law, if no UST is dispensing oil when an application is submitted, an applicant must show the leak was not caused by (1) failing to comply with UST laws and regulations or (2) reckless, willful, wanton, or intentional conduct or negligence constituting noncompliance with UST laws or regulations. The bill eliminates this requirement.

### ***Reduction of Reimbursements***

Current law authorizes the board to reduce payments if the compliance summary shows the applicant failed to fully correct a violation when he requests payment. The board may also reduce payments for other violations of UST laws or regulations. The bill limits reductions in the latter case to those instances where a violation has not been fully corrected by the time the application is submitted.

### ***Attorney General's Actions for Damages***

Current law allows the attorney general to sue for certain damages at the request of the board or DEP commissioner. Under the bill, he may only bring such an action if the board requests it.



The law allows actions against anyone who (1) owns or operates the UST where the leak occurs or (2) owns the land where the UST is located at the time or after the leak occurred until a final remedial action report is submitted and approved. The bill changes several of the conditions under which the attorney general may sue such people.

Table 1 shows the conditions under which the attorney general may sue a UST owner or operator, or person who owns the land where the UST is located at the time or after the leak occurred.

TABLE 1

<b>Current Law</b>	<b>Under the Bill</b>
UST owners, operators, or certain property owners required by regulation to notify DEP of a leak, but no notification was provided.	Limits provision to owners, operators, or certain property owners who are responsible parties who knowingly and intentionally failed to notify DEP of a leak.
Leak results from (1) a reckless, willful, wanton, or intentional act or omission of the person sued or (2) his negligent act or omission that constitutes noncompliance with the laws or regulations governing UST installation, operation and maintenance.	Leak results from a responsible party's reckless, willful, wanton or intentional act or omission. Deletes negligence provision.
Leak occurs from a UST that is not in compliance with the commissioner's final order or court's final judgment concerning UST noncompliance.	Only applies if the lack of compliance with the order or judgment was the proximate cause of the leak.

**Commissioner's Ability to Access Account for Remediation**

By law, the DEP commissioner may spend up to \$1 million from the account to prevent or abate pollution resulting from a leak and provide potable drinking water, and the attorney general may sue UST owners or operators, or the people who own the land on which the leak occurred, to recover these costs. The bill eliminates the commissioner's ability to use money from the account in this way, and requires her to apply to the board for reimbursement or payment from the account when she conducts such a cleanup. It eliminates the attorney general's ability to recover such funds for the commissioner.

By law, the board has 90 days to issue a decision after receiving an initial application, and 45 days in which to decide on second or subsequent applications. Current law requires that a copy of the board's decision be sent to the commissioner and the applicant, and allows the commissioner or anyone aggrieved by the board's decision to request a hearing before the board. The bill eliminates (1) the requirement that the commissioner get a copy of the decision and (2) her ability to seek a hearing (unless she is seeking payment or reimbursement). It requires that any modified decision the board makes be sent only to the person seeking payment, instead of all parties to the decision. This provision may affect the ability of other parties to receive adequate notice to appeal a decision.

### ***Discounted Payments***

By law, the board may speed up consideration of a payment request for certain activities, costs, or expenses in return for paying less than the full amount when considering a supplemental application based on an initial payment application it received before June 1, 2005 and found eligible for payment. These changes have no effect on applications filed before October 1, 2006, because the bill applies only to applications filed on or after October 1, 2006 (see COMMENT).

The bill requires the board, rather than the commissioner, to identify categories of activities that cost less than \$100,000 for which it may approve payments of less than the full amount, and the percentages it will pay, considering the amounts previously paid and

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other information the board, rather than the commissioner, deems relevant. The board may approve payments of up to 90% of the average amount as it, rather than the commissioner, determines. It gives the board, rather than the commissioner, authority to change any percentage it previously approved, to prescribe the forms the applicant may use to accept the percentage payment, and makes conforming changes.

By law, notice to the commissioner of a release constitutes compliance with regulations regarding notice to the board. The bill requires the commissioner to notify the board when she receives notice of a release.

**§ 7—APPEALS**

By law, the DEP commissioner or anyone aggrieved by a board decision may appeal to New Britain Superior Court. The bill limits the right of appeal to people seeking payment or reimbursement, and only from a hearing before the board. By law, if the board orders payment from the account and a party to the appeal contests any portion of the payment, the board must pay the uncontested portion. Under the bill, if the board orders payment for a portion of the amount sought, and the person seeking payment and a party to the appeal contest its denial of the remainder, the board must pay the uncontested portion.

**§ 8—PAYING OVERDUE CLAIMS**

These provisions require that certain actions occur by October 1, 2006. However, the bill does not take effect until that date.

The board must, by October 1, 2006, retain an expert to determine the exact nature and scope of the application backlog. He must determine the amount needed to pay off the claims held longer than legally allowed. Once he has done so, the board must order payments from the account to pay off all claims that were not decided within the 90 day deadline. This apparently refers (1) only to initial claims to which the 90-day deadline applies and (2) to all claims held more than 90 days, regardless of the claims' validity. The board must make these

payments within 180 days of ordering them. The board may pay the expert up to \$250,000 for his services.

By October 1, 2006, the board must hire an expert to decide whether it is feasible for the board to provide UST owners and operators with evidence of financial responsibility that federal law requires by reinsuring them for between \$250,000 and \$2 million. The board may use up to \$250,000 of the money allocated for administrative costs to pay this expert. The board must report to Environment Committee by February 1, 2007 concerning the results of its analysis.

### **§ 9—EXPANDING THE UNIVERSE OF ELIGIBLE APPLICANTS**

This section appears to apply the bill to certain pending applications, but several of the bill's provisions apply to applications filed on or after October 1, 2006.

### **COMMENT**

Most of the bill's provisions apply to applications filed on or after October 1, 2006. Because of this, several provisions affecting applications filed before that date have no effect. These include provisions affecting the definition of a responsible party (§ 1); elimination of certain application deadlines (§ 2); compliance status (§ 6); and discounted payments (§ 6).

### **COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 21    Nay 7    (03/16/2006)